

DOCUMENT RESUME

ED 164 718

UD 019 026

TITLE Child Nutrition Amendments of 1978. Report Together With Minority Views (To Accompany H.R. 12511).

INSTITUTION Congress of the U.S., Washington, D.C. House Committee on Education and Labor.

PUB DATE 78

NOTE 67p.; For related documents, see UD 018 656 and UD 018 840; Not available in hard copy due to reproduction quality of the original document

EDRS PRICE MF-\$0.83 Plus Postage. HC Not Available from EDRS.

DESCRIPTORS Breakfast Programs; Child Care; Elementary Secondary Education; *Federal Legislation; *Federal Programs; Inflation (Economics); Lunch Programs; *Nutrition; *Resource Allocations; *School Responsibility

IDENTIFIERS *Child Nutrition Amendments 1978

ABSTRACT

In this Congressional report, the child nutrition amendments of 1978 are described in terms of their legislative history, inflationary impact, and present revisions. The reasons and provisions for extending and expanding certain child nutrition programs under the National School Lunch Act and the Child Nutrition Act of 1966 are explained. Reasons and standards for extending the special supplemental food program for women, infants, and children (WIC) through fiscal year 1982 are described. All terminology used in the Bill (H.R. 12511) is defined. Appropriations authorized for nutrition education and training are explained, and opposition to mandating breakfast programs in schools in low income areas is recorded. (WI)

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95TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 95-1153

ED 164718

CHILD NUTRITION AMENDMENTS OF 1978

MAY 15, 1978.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor,
submitted the following

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

REPORT together with MINORITY VIEWS

[To accompany H.R. 12511]

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[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 12511) to extend for 1 year the child care food program of the National School Lunch Act and the women, infants, and children program of the Child Nutrition Act of 1966, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in *italic type* in the reported bill.

The title of the bill is amended to reflect the amendment to the text of the bill.

SUMMARY OF THE BILL

H.R. 12511 extends with amendment certain child nutrition programs under the National School Lunch Act and Child Nutrition Act of 1966. The major thrust of this bill is to provide initiatives for program expansion and to strengthen program administration in order to make the child nutrition programs more responsive to the nutritional needs of our nation's children.

H.R. 12511 extends the special supplemental food program for women, infants and children (WIC) through fiscal year 1982 and authorizes funds at a level of \$650 million for fiscal year 1979, \$850 million for fiscal year 1980, \$900 million for fiscal year 1981 and \$950 million for fiscal year 1982. The committee bill also establishes a national income standard for the WIC program by limiting program eligibility to individuals who are determined to be a nutritional risk and whose family incomes are below 195 percent of the poverty level.

UD 019026

Additional provisions include a strengthening of the nutrition education component of the program and a change in the allocation formula for administrative funds in order to provide for a more effective and efficient program administration.

Under the provisions of H.R. 12511, the child care food program is given a permanent authorization and the definition of "eligibility" is expanded to include institutions that are receiving funds under title XX of the Social Security Act. The bill also proposes to simplify the administration of the child care food program significantly by creating less complex payment rates for all child care institutions. The bill also provides start-up funds and advance payments to family and group care institutions for the establishment and continuation of the child care food program.

Lastly, the committee bill proposes to expand the school breakfast program by requiring public schools with a high concentration of needy children to implement a breakfast program. The bill also provides equipment funds and higher reimbursement payments to these schools in order to facilitate this expansion. And, the bill expands the special milk program, increases administrative payments, and cuts back on payments for reduced price meals.

LEGISLATIVE CONSIDERATION

H.R. 12511 was introduced on May 2, 1978, by Chairman Carl D. Perkins and was co-sponsored by Congressmen Quie, Ford of Michigan, Andrews of North Carolina, Blouin, Simon, Zeferetti, Mottl, Murphy of Pennsylvania, Weiss, Heftel, Corrada, Kildee, Miller of California, Buchanan, Pressler, Goodling, Mrs. Pettis, Pursell and Jeffords. The Subcommittee on Elementary, Secondary, and Vocational Education held one hearing day on the child nutrition legislation on April 27, 1978.

On May 2, 1978, the subcommittee held a mark-up session to consider the child nutrition legislation. At that time, the Subcommittee agreed upon a bill extending the child care food program and the special supplemental food program for women, infants, and children for one year with an amendment to increase the authorization of appropriations for the special supplemental food program for women, infants, and children to a funding level of \$650 million for fiscal year 1979. The subcommittee agreed to defer all substantive amendments until the full Committee on Education and Labor consideration of the child nutrition legislation.

The full Committee on Education and Labor held a mark-up session on H.R. 12511 on May 9, 1978, and ordered the bill reported with amendment by roll call vote of 28 to 5. The amendments adopted by the full committee are described in the following sections.

EXPLANATION AND JUSTIFICATION OF H.R. 12511

SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

Legislative History

The special supplemental food program for women, infants and children (WIC) is a nutrition supplementation program that makes

funds available to local health clinics through State departments of health and to Indian tribes for the purpose of providing supplemental foods to low-income women, infants and children as an adjunct to good health care.

Congress, in finding an overwhelming number of nutritionally and economically deprived women, infants and children, first authorized the WIC program on an experimental basis in 1972. By 1974, there were an estimated 204,000 participants in the program. Public Law 94-105 extended the program through fiscal year 1978 and increased the authorization of appropriations to a funding level of \$250 million for fiscal year 1976 and each succeeding fiscal year through fiscal year 1978.

Under the provisions of Public Law 94-105, individuals judged to be "at nutritional risk" by a competent medical authority, because of inadequate nutrition or income, are eligible to receive a food package of highly nutritious foods. The definition of eligibility was expanded by that law to include nonnursing mothers up to 6 months, nursing mothers up to 1 year, and children up to their fifth birthday. The legislation also requires that nutrition education is to be integrated into program operations to the maximum extent possible.

Presently, there are approximately 70 agencies (49 States, Puerto Rico and the Virgin Islands and 19 Indian agencies) administering the WIC program; but only six of these States operate the program on a statewide basis. There are 1,300 operating local WIC clinics although there still remain over 1,600 counties in the United States that have not implemented the WIC program. And, lastly, 1.124 million women, infants and children are participating in the WIC program, although there are estimated to be 8.3 million low-income individuals who are potentially eligible but who are not being reached at this time.

Need for Legislation and Provisions of the Bill

During its consideration of the WIC program, the committee found a body of persuasive evidence which indicates the positive aspects of the program and its potential impact on our nation's nutritionally deprived women, infants and children. The overwhelming support that the WIC program inspires on all levels further reinforces the committee's view that there is a critical need for its continuation. Moreover, the committee feels that any significant legislative changes aimed at program expansion or modification must be carefully weighed in order to determine the potential impact of such changes on the high level of achievement that is synonymous with the WIC program at this time.

During its deliberations of the legislative alternatives, the committee has drawn heavily upon the expertise of those individuals whose knowledge of the nutritional and operational aspects of the WIC program has been so important in the shaping of the WIC legislation in the past. The Advisory Council on Maternal, Infant, and Fetal Nutrition, established in 1975 by congressional mandate, has been of special assistance to the committee.

In its 1977 annual report to Congress, this Advisory Council made a number of program recommendations, which have been incorporated into the text of the committee bill.

There is, however, one recommendation that the committee feels is of special importance. As stated in the Advisory Council's report:

The Council supports the continuation of the WIC program because it feels that the program is providing food to individuals who have a recognized unmet need. The Council believes the WIC program is well-accepted and has provided a vehicle for coordination of food programs administered by U.S. Department of Agriculture and Department of Health, Education and Welfare. While there is some data suggesting that participation in WIC has an impact on health status of individual participants, the Council believes that further evaluation is necessary."

Another expert body has made the same recommendation. In 1975, Congress also authorized the establishment of the Advisory Committee on Nutrition Evaluation for the purposes of determining the scientific methodologies to be used to best assess and evaluate the health benefits of the WIC program. The committee Chairman, Dr. Nathan Smith, in a letter to the Secretary of Agriculture, in November, 1977, stated that "a continuous nutrition surveillance evaluation was the greatest potential for providing a positive impact on the WIC program. Nutrition surveillance would provide for a continuous assessment of the nutrition and health status of WIC program recipients and would improve the operation of the program through upgrading and standardizing procedures used by local health agencies". The Advisory Committee included in its November, 1977, report to Congress alternative proposals for evaluating the WIC program.

The committee feels that until the boundaries of the WIC program are clearly defined, there is a critical need for an indepth evaluation of WIC intervention on the nutritional and health status of the WIC recipients. Until such a study is made, it will be impossible to accurately determine the program's capabilities in terms of its potential impact as a preventive health program. In light of this, the committee bill authorizes the use of one-half of 1 percent, but not to exceed \$3 million, of the annual WIC appropriation to be used by the Secretary of Agriculture for the purposes of program evaluations and the administration of pilot projects.

In addition to this provision requiring further evaluation and study, the committee believes that several other improvements can be made in the program. The committee is especially aware of the critical role that nutrition education plays in ensuring that the individual nutritional needs of the WIC participant are met. Therefore, the committee bill strengthens the nutrition education component of the WIC program by directing the Secretary to establish standards to insure that adequate nutrition education services are provided. The bill also requires training for those persons providing nutrition education, calls for the States to make annual evaluations of the nutritional education component of their WIC program, and requires that no less than a fifth of each State's administrative funds be used for this purpose.

For the purposes of strengthening nutrition education and ensuring an overall improvement in the administration of the WIC program, the committee bill revises the formula for the allocation of adminis-

trative funds to States and local agencies. Both the Department of Agriculture, in its testimony before the subcommittee, and the Advisory Council on Maternal, Infant, and Fetal Nutrition concluded that the existing formula impedes program effectiveness. Presently, States and local agencies receive 20 percent of their total WIC grant for administrative costs; however, this 20 percent is strictly defined by the amount of food benefits provided each year within the State. Therefore, State and local agencies have little incentive to tailor the food packages to meet individual needs.

State and local agencies also encounter budgetary constraints under the existing formula. Presently, States are permitted to use up to 20 percent of their total WIC grants for administrative expenses. However, many States do not know in advance what the size of their program will be. Therefore, they cannot accurately determine the amount that they will need to spend in order to maintain and expand their program. As a result, the Department estimates that States are now using only 17 percent of their permissible 20 percent of administrative funds.

In an effort to alleviate these administrative problems, the committee formula provides for a separate grant for administrative purposes to the States in the beginning of the fiscal year. The grant, which will no longer be based on the amount of food served in a State but rather on 20 percent of the total WIC allocation that the individual States are to receive, takes into account not only food costs but also the varying needs of the individual States and local districts. The committee feels that this change will not only generate more administrative funds for nutrition education but will also enable State and local clinics to staff and monitor the WIC program more effectively.

When addressing the issue of program eligibility there is conclusive evidence that nutritional risk is prevalent among lower socio-economic groups. In 1972, the ten-State nutrition study conducted by HEW concluded that poor nutrition increases as income levels decrease. The "Study of Nutritional Status of Preschool Children in the United States" concluded that the evidence of nutritional risk among the lower income group is not as much a problem of the nutrition quality of the food but more of a problem of the lack of food. Therefore, to insure that the benefits of the WIC program are targeted to low-income individuals, the committee limits eligibility to women, infants, and children whose family incomes are below 195 percent of the poverty level.

The Advisory Council on Women, Infants, and Fetal Nutrition reports that there are 8.3 million low-income women, infants, and children that are potentially eligible for the WIC program. In light of the fact that only one-eighth of the target population is now being reached, the committee feels that every effort should be made to ensure that the program reaches as many nutritionally and economically deprived individuals as possible. Therefore, the committee bill extends the WIC program for four years and increases the authorization of appropriation to a funding level of \$650 million for fiscal year 1979, \$850 million for fiscal year 1980, \$900 million for fiscal year 1981, and \$980 million for fiscal year 1982. The bill also requires the States to conduct much more intensive outreach efforts to expand their programs.

Although the present authorization of appropriation for WIC is at \$250 million a year, the actual rate of expenditure in the program is averaging \$440 million a year. This level exceeds the authorization (which is fully appropriated) due to the fact that several years ago the funds appropriated for the program were impounded but were subsequently released by court order, causing the actual level of expenditures to exceed the yearly appropriation level under the \$250 million authorization. Consequently, although the higher levels of authorizations in the committee bill may seem to be great increases from the present level, they must really be viewed in terms of the amounts actually being spent.

Also, as regards funding, the committee had considered an amendment which would have placed an open-ended authorization on the WIC program for fiscal years 1981 and 1982. That proposal was rejected, however; and instead definite authorization levels for those years were accepted in order to make clear that this program is not an open-ended entitlement program but rather is a program subject to regular appropriations under definite authorizations of appropriations.

It should be noted, however, that the committee bill does contain a provision forbidding the Secretary from reducing the level of foods an approved local health clinic is distributing under the program. This provision is not meant to authorize an open-ended entitlement; rather it is meant to ensure that all the funds appropriated by Congress and allocated among the States by the Department are in fact expended. The committee feels the need to include this type of provision due to local uncertainty about the level of funding which results from the impoundment mentioned above.

CHILD CARE FOOD PROGRAM

Legislative History

The child care food program was first established in 1968 as the year-round component of the Special Food Service Program for Children, a three-year pilot program that included both the child care food program and the forerunner to the summer food service program. The Special Food Service Program was created by Congress in 1968 in response to the growing national awareness of a child's need for good nutrition and the increasing number of working mothers.

Congress developed the child care component of the Special Food Service Program in order to provide Federal grants for meals served in institutions providing non-residential day care for children in areas where there was a high concentration of working mothers and where poor economic conditions existed. The institutions eligible to participate included day care centers, settlement houses, recreation centers and institutions providing day care for the handicapped.

In 1972, Congress reaffirmed its support of this program by extending the Special Food Service Program through fiscal year 1975. Later, Congress became aware of the need for a separate legislative vehicle for day care institutions, and in 1975 strengthened the program considerably by separating its authorization from that for the summer feeding program. This public law (Public Law 94-105) also expanded the definition of eligible institutions to include any child care institution which has a tax-exempt status and which is licensed and non-residential. The matching requirement was also eliminated and the reimbursement formula was modeled after that used in the regular school lunch program.

Need for Legislation and Provisions of the Bill

There is a compelling need for quality day care in the United States today. The labor force participation of mothers with children under 6 years has increased from 25 percent in 1964 to 40 percent in 1976. In 1977, there were 5.5 million working mothers with children under 6 in the United States.

The Department of Agriculture has estimated that there are 550,000 children in day care institutions who are currently participating in the child care food program. This figure clearly indicates that the child care food program is falling critically short of providing nutritional meals to the needy children that are presently in day care services.

Since its inception in 1968 as a pilot program, the child care food program has had very little program visibility. Although Congress made significant efforts to strengthen the legislation in 1975, the program still remains limited in its outreach. In August, 1975, 429,944 children were participating in the child care food program. One year later, participation had increased to only 463,146 children.

The committee is aware of the great potential of the child care food program in its role as a nutritional adjunct to day care services. However, when considering legislation to expand this program, the committee felt that any legislative changes should not result in a dilution of quality standards for day care services. Therefore, the committee bill makes the child care food program a permanent program and contains a number of amendments designed to carefully expand the program and to ensure the nutritional integrity of the program.

Assistant Secretary Carol Foreman of the Department of Agriculture, in her testimony before the subcommittee, stated the great need for the expansion of the program. She related that many eligible institutions are not participating because of the complexity of the legislation and attributed much of the confusion to the statutory language relating to the reimbursement payments.

Further support for Ms. Foreman's statement is found in a study conducted on the program by the Congressional Research Service (CRS). In a 1977 issue paper on the program, the Education and Welfare Division of the CRS reported that 99 percent of those child care institutions who are participating in the child care food program are serving free meals to all children. This very high percentage indicates that the complexities of the administrative requirements for reimbursement payments are unnecessary.

The committee bill proposes to eliminate this obstacle by establishing a simplified payment structure for all child care institutions. Under the provisions of the bill, institutions where at least two-thirds of the children are eligible to receive free or reduced price meals would receive reimbursement payments prescribed for free meals. Institutions where between one-third and two-thirds of the children meet eligibility criteria for free or reduced price meals, would receive reimbursement for meals at the rate prescribed for reduced price meals. Institutions where fewer than one-third of the children meet income standards for free or reduced priced meals would receive reimbursement payments at the rates for paid meals. However, any institution may elect to continue to receive reimbursement rates on an individual income eligibility basis.

This provision is designed to simplify the procedural requirements of the program. The committee feels that this reimbursement formula will reduce paperwork significantly, thereby encouraging more institutions to participate.

The committee bill also contains several provisions that would positively affect the administration of the program in group and family day care homes. Under the proposed legislation, these homes will receive a flat payment for food and labor costs and another payment for administrative costs up to a limit to be prescribed by the Secretary. Presently, group and family day care homes receive a flat rate for food costs only. The bill also authorizes start-up and advance payments for these homes.

This provision is again designed to ease the administration of the program. In light of the fact that most of the nation's children in day care are cared for in day care homes the committee is optimistic that this revision will prove to be very effective in bringing these day care homes into the program.

As the National Child Nutrition Coalition stated in a hearing before the subcommittee, "Inasmuch as family day care homes are the predominant means through which day care services are offered in the country and since family day care homes are located most predominantly in impoverished communities, we feel that the child care food program must become more responsive to the needs of family day care homes."

The eligibility requirement of the child care food program has been subject to a great deal of controversy. Many individuals involved with the program have asserted that the existing requirements are detrimental to program expansion because of the restrictiveness of the licensing requirement. Present law stipulates that in order to participate in the child care food program, an institution must either have local, State or Federal licensing or be in compliance with the standards established by the Federal interagency day care requirements.

Critics of the licensing requirement contend that its major flaw is that many States do not have a licensing mechanism and, in the States that do, there is a significant backlog. They also question the relevancy of using the Federal interagency day care requirements when approving an institution for the child care food program.

Therefore, the committee bill revises the licensing requirement in order to allow institutions receiving funds under Title XX of the Social Security Act to participate in the child care food program, when local, State or Federal licensing is unavailable. The committee feels that this alternative to the licensing requirement will not only allow for program growth but also secure the quality standards of the day care services.

SCHOOL BREAKFAST PROGRAM

Legislative History

Since its inception in 1966, the legislative history of the breakfast program clearly reflects a congressional commitment to and recognition of the critical need for such a program.

When it was established, the breakfast program was limited to those schools drawing attendance from areas in which poor economic conditions existed and schools which had a substantial number of

children enrolled who must travel long distances daily. In 1970, Congress required States to include in their State plan of operation how they intended to expand the school breakfast program in order to reach needy children. In 1971, Congress removed the initial limitation on the types of schools eligible for the program and authorized the Secretary to pay up to 100 percent of the full operating costs of a breakfast program in needy schools. Public Law 94-105 further expressed Congress commitment to the breakfast program by making it a permanent program with openended funding. As recently as last year, Congress amended the program by requiring States to establish criteria in order to determine needy schools and to offer higher reimbursement to every needy school that established a breakfast program.

Need for Legislation and Provisions of the Bill

Despite these legislative efforts to expand the breakfast program, administrative and attitudinal problems have inhibited its growth. Although the program has been available to all schools since 1972, only 15,435 schools were participating in the breakfast program in fiscal year 1975. This figure is especially low when compared to the 89,311 schools that were participating in the school lunch program in that same year.

Presently, there are 23,000 schools and institutions participating in the school breakfast program while there are over 90,000 schools in the school lunch program. Of the 26.8 million children receiving school lunches, only 19.5 percent are also receiving school breakfasts.

In his statement before the subcommittee, Ronald Pollack of the National Coalition on Child Nutrition stated:

In sum, Congress has been steadfast in its determination that the breakfast program be extended to schools in needy communities and has tried different approaches to implement its expansion. Unfortunately, however, it is clear that congressional intentions to bring about a reasonable expansion of the program have been frustrated.

Assistant Secretary Carol Foreman of the Department of Agriculture cited studies that have demonstrated the contribution of the school breakfast program to sound nutrition and to assisting in academic achievement. The studies provide conclusive evidence that the school breakfast program has a profound impact on a child's learning abilities in terms of scholastic improvement, classroom responsiveness and general disposition.

Because of the significant impact that the breakfast program has on a child's health status and academic performance, the committee feels that legislative steps must be taken in order to insure that this program is made available to all needy children. However, the committee does want to emphasize that the breakfast program was designed specifically for those children who would otherwise go without breakfast and any provisions contained in this bill were created for the purposes of achieving this objective.

The committee bill contains a provision that requires all public schools where 50 percent of the lunches are served at a free or reduced price rate to offer a breakfast program by the 1979-80 school year. This figure is set at 45 percent for the 1980-81 school year, and at 40 percent for all succeeding school years.

Under this proposal, school districts may institute the breakfast program in an alternate school rather than the required school provided that the alternate school has as many needy children. In addition, all schools required to offer the breakfast program under either a Federal or State mandate will be eligible to receive reimbursements for breakfasts served based on the especially needy rate. Presently, there are five States that have legislated breakfast mandates in an effort to expedite the expansion of their breakfast programs.

In light of the fact that for the smaller schools, this requirement may not be economically feasible, all schools with an enrollment of less than 125 students are excluded from this requirement. The committee bill has also excluded private schools since there seem to be special administrative problems with such institutions.

The committee is aware that administrative problems brought about by the implementation of the breakfast program have acted as a disincentive in the past. Therefore, in an effort to alleviate many of these operational problems, the committee bill contains several provisions that will facilitate implementation. Under existing law, schools are required to maintain separate accountability for the school lunch and breakfast programs. The committee bill contains a provision that eliminates this requirement in order to encourage the implementation of the breakfast program by reducing paperwork and recordkeeping.

The committee bill also contains a provision that makes reserved equipment funds readily available to schools instituting a breakfast program by placing these schools in the priority group. The committee bill also increases the authorization for equipment assistance up to \$75 million and raises the reserved funds up to 50 percent. Under present legislation, the authorization ceiling for equipment funds is \$40 million and the reserve portion is set at 33 $\frac{1}{3}$ percent.

MISCELLANEOUS PROVISIONS

WHOLESALE PRICE INDEX

Under existing legislation, both cash and commodity reimbursement rates in the child nutrition programs are adjusted annually to reflect changes in the "food away from home" series of the consumer price index. This series reflects the inflationary rate of not only food prices, but also labor, energy and other variables.

The Economic, Statistic and Cooperative Service (ESCS) of the Department of Agriculture has designed an alternative index, the wholesale price index, that is based on the changes in wholesale prices of the five major food groups that make up the bulk of the commodities donated to the child nutrition programs: cereal and bakery products; meats, poultry, and fish; dairy products; processed fruits and vegetables; and fats and oils.

The committee feels that the food away from home series of the consumer price index is the proper index to be used when tracking changes in prices of cash reimbursements. However, it is not relevant when adjusting the level of commodities to be purchased and distributed to schools by the Department. Therefore, the committee bill

contains a provision that authorizes the Secretary to adjust the commodity donation rate in accordance with changes in the wholesale price index for foods used in schools and institutions.

REDUCED PRICE REIMBURSEMENT

Prior to 1975, schools were not required to offer reduced price lunches to needy students. As an incentive for schools to offer lunches at a reduced price, schools received only 10 cents less in reimbursement than they received for free meals even though they could not charge more than 20 cents. Essentially, schools charging 20 cents for reduced price lunches were receiving 10 cents in revenue over and above their costs for a reduced price lunch.

Under the provisions of Public Law 94-105, schools are now required to offer reduced price lunches to eligible students. Therefore, the committee bill proposes to set the reimbursement for reduced price lunches at 20 cents less than the reimbursement for free lunches so that the revenues from reduced price lunches equal those from free lunches.

In those States where all schools were charging 10 cents for reduced price lunches, this provision is modified so that the reimbursement rate for reduced priced lunches in these States would be 10 cents less than the rate provided for free meals.

SPECIAL MILK PROGRAM

The committee bill contains an amendment to the special milk program that changes the index to be used when adjusting the reimbursement rate for milk purchased for the child nutrition programs. Currently, the reimbursement is adjusted to reflect the changes in the "food away from home" series of the consumer price index which is based on the overall restaurant food prices. The committee feels that the present indexing bears little relationship to the changes in the milk prices. Therefore, the committee bill proposes to adjust the reimbursement rate for milk in accordance with changes in the wholesale price of milk.

The second provision amends the special milk program in order to allow children who qualify for free lunches to receive an extra half pint of milk during meal hours at their request. Public Law 95-166 amended the special milk program to limit the availability of the extra half pint of free milk to children receiving free lunches only during the hours that school meals were not being served.

STATE ADMINISTRATION EXPENSES

Under the provisions of Public Law 95-166, State administrative funds were increased in order to provide for a more effective administration of the child nutrition programs on the State level. Unfortunately, however, the existing allocation formula concentrates much of the increase in six major States with the remaining States receiving little if any increase.

Therefore, the committee bill proposes a new allocation formula that would take into account the economies of scale in populated areas

and the need of the rural area with a concentration of small schools. The proposed formula increases the allocation to a minimum of 1.5 percent of the total amount spent in the second preceding fiscal year on the child nutrition programs. The committee bill also creates a separate funding formula for child care food program and increases the funding for summer food service program.

OVERSIGHT

No findings or recommendations concerning oversight of the programs covered by this legislation have been received by the committee from the Committee on Government Operations. The Subcommittee on Elementary, Secondary, and Vocational Education conducted a hearing on child nutrition legislation on April 27, 1978, which was also an oversight hearing on the programs included in this bill. The legislation is based on the oversight findings from this hearing.

COST ESTIMATES

The Congressional Budget Office has provided the following estimates on the costs which will be involved in implementing this legislation. The committee concurs with these estimates and adopts them in compliance with clause 7 of rule XIII. No cost estimates have been received from the Department of Agriculture.

The Congressional Budget Office letter follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., May 12, 1978.

HON. CARL D. PERKINS,
Chairman Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 12511, the Child Nutrition Amendments of 1978.

Should the committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

ROBERT A. LEVINE,
Deputy Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

MAY 12, 1978.

1. Bill number: H.R. 12511.
2. Bill title: Child Nutrition Amendments of 1978.
3. Bill status: As ordered reported from the House Education and Labor Committee, May 9, 1978.
4. Bill purpose: The purpose of this bill is to (1) amend and extend for four years the authorization for the special supplemental food program, (2) to amend and permanently authorize the child care food

program, and (3) to amend several of the programs under the National School Lunch Act and the Child Nutrition Act of 1966. This bill is subject to subsequent appropriation action.

5. Cost estimate:

[By fiscal years, in millions of dollars]

Authorization levels	1979	1980	1981	1982	1983
Child-care food program	205	244	281	320	358
Special supplemental feeding program (WIC)	650	850	900	950	
School lunch program	-16	-22	-22	-23	-24
Commodity program	15	21	31	32	32
Special milk program	-3	-7	-3	-5	-3
School breakfast program		11	8	5	
Equipment assistance	35	35	35	35	35
State administrative assistance	2	5	6	7	8
Total	888	1,137	1,235	1,321	406

[By fiscal years, in millions of dollars]

Projected costs	1979	1980	1981	1982	1983
Child-care food program	176	210	252	288	324
Special supplemental feeding program (WIC)	590	830	890	945	95
School lunch program	-16	-22	-23	-23	-24
Commodity program	13	18	29	31	32
Special milk program	-3	-7	-3	-5	-3
School breakfast program		9	8	6	1
Equipment assistance	21	35	35	35	35
State administrative assistance	2	5	6	7	8
Total	783	1,078	1,194	1,284	468

The costs of this bill fall within budget function 600.

6. Basis for estimate: The authorization levels and projected costs in this estimate for both the child care food and the WIC programs reflect the entire program costs since these programs need reauthorization for fiscal year 1979. The remaining programs have permanent authorization. Therefore, the costs associated with them are the incremental cost resulting from the legislative changes in this bill.

Unless otherwise specified, the effective date of this bill is assumed to be October 1, 1978. The explanation for each of the program estimates is detailed below.

Child Care Food Program

This bill permanently authorizes the child care program. The fiscal year 1979 cost of \$205 million is \$23 million over the cost of the program under a current policy assumption.

The estimated incremental cost reflects the assumption that the percentage of meals served at a free or reduced rate would increase from 84 percent to 99 percent, as a result of the new provisions for determining reimbursement categories. The reimbursement rates were inflated by the CBO projection for increases in the CPI food away from home index and, where specified, by the CBO projection for increases in the new CPI index for all urban consumers. The cost of these changes reflect a January 1, 1979, implementation date.

The reimbursement rate for commodities is also revised by this bill and this provision is estimated to add \$1 million over current policy.

The estimates for the equipment assistance and for the administra-

tive studies were based on the authorization levels stated in the bill which added \$5 million to the present level. The projected costs for the child care program reflect the current spendout for the program of 85 percent the first year and the remainder the next year. The underlying current policy projection assumes an increase in meals served of 14 percent a year in 1979, declining to an annual rate of increase of 9 percent by 1983.

Special Supplemental Food Program (WIC)

The cost estimate for WIC is based on the maximum authorization levels stated in the bill. By fiscal year 1982, the authorized \$950 million would cover approximately 2.3 million program participants at an average cost of \$27 per month. Based on the projections of census data, this would represent roughly 28 percent of the population of mothers, pregnant women and children with incomes below the income guidelines. By the end of fiscal year 1978 the participation rate for this eligible population is expected to be approximately 13 percent.¹ Projected costs assume full appropriation of the authorization levels. The spendout rate for this program reflects the fiscal year 1978 rate of 90 percent the first year and the remainder in the year next.

School Lunch Program

The cost saving associated with the school lunch program results from the 10 cent reduction in the reduced price reimbursement rate. Currently, 5.5 percent of the lunches, or about 230 million meals in fiscal year 1978, are served at a reduced price rate. The estimate assumed this ratio would hold relatively constant over the projection period. Therefore, the outyear savings are based on the projection of total lunches served. This estimate reflects a January 1, 1979, effective date.

Commodity Program

This bill changes the index for calculating the commodity reimbursement rate from the CPI food away from home series to the wholesale price index for the five food groups listed in the bill. Since the wholesale prices for food have risen faster than other costs over the last year, the result of this change has been to increase the reimbursement rate by .5 cents for each lunch served in fiscal year 1979 and varies from increases of .5 cents to .75 cents in the outyears. This cost estimate reflects a January 1, 1979 implementation date. The spendout for this program is similar to the child care program.

Special Milk Program

H.R. 12511 changes the index for calculating the special milk reimbursement rate from the CPI for food away from home series to the wholesale price index for fluid milk. The wholesale price has been rising slower than the CPI, resulting in a .25 cents reduction for every carton of milk served other than those served at a free rate. In the outyears, this reduction ranges from .25 cents to .5 cents. This cost savings assumes a January 1, 1979 implementation date.

¹ The eligible population referred to here includes all of those eligible because of their incomes or demographic characteristics. This includes individuals who would not be considered nutritionally at risk. No information is currently available, however, on the nutritional status of this group.

School Breakfast Program

The new provisions for the school breakfast program make it mandatory for schools with high concentrations of low income children to offer the breakfast program.

No comprehensive data are currently available giving the distribution of schools and average daily attendance classified by the percentage of lunches served that are needy lunches. Such data are necessary to calculate potential eligibility under the bill. Moreover, no data are available showing current participation rates in the breakfast and lunch programs of schools (and of students within schools) classified by the school's concentration of needy students. The CBO estimate was derived from fragments of data in the following way: Data were available on the distribution of elementary schools and enrollment classified by the percent of school enrollment eligible for the needy lunch program and degree of urbanization. These data were used to estimate the distribution of total average daily attendance (at all grade levels) by concentration of needy lunch students and by urban versus non-urban location. According to this procedure, the proportion of average daily attendance in schools offering breakfast programs would be 46 percent in urban schools and 24 percent in non-urban schools subject to the provision mandating a breakfast program in all schools where 40 percent or more of lunches served are free or at a reduced price.

In 1976, about 35 percent of average daily attendance in urban areas was in schools with a breakfast program; in non-urban areas this proportion was 14 percent. Because of the introduction of state mandated programs and the Department of Agriculture's outreach program, growth in the breakfast program under current policy has been rapid. Based on these recent trends, it is estimated that under current policy about 44 percent of average daily attendance in urban areas would be in schools with a breakfast program by 1980 (20 percent in non-urban schools). Participation is likely to be concentrated in schools with a substantial proportion of needy children. It was assumed that participation in the breakfast program in those schools offering breakfast would increase to 38 percent by 1980, and 40 percent by 1983.

Based on a comparison of program growth induced by the mandate and program growth expected under current policy, the incremental change in breakfasts served is estimated to be 25 million (at an incremental cost of \$11 million) in 1980 when the mandatory provision is extended to the 50 percent concentration schools. In 1982 when the mandatory provision is extended to the 40 percent concentration schools, the increment over current policy is small, adding \$5 million in costs. By 1983, growth in breakfasts under current policy would bring the levels close to the mandated targets. Hence, the incremental cost would be negligible.

Equipment Assistance

The cost estimate for equipment assistance reflects the additional \$35 million in the authorization level over the present permanent authorization amount of \$40 million annually. The projected costs assume full appropriation of the authorizations level. The spendout rate reflects the current program spending patterns of percent the fiscal year on the remainder the second.

State Administrative Expenses

The increased cost associated with state administrative expenses result from the implementation of the new formula. This estimate assumes an effective date of January 1, 1979. The spendout rate is 100 percent.

Income Poverty Guidelines

The bill will change the income eligibility standards for all the child nutrition programs so that family size will be taken into account. This will result in a higher income cutoff for very large families and a lower cutoff for very small families. The net effect of this provision on the child nutrition programs has not yet been determined.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Deborah Kalcevic.
10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

INFLATIONARY IMPACT

Although the committee bill proposes increases in the total authorization levels and/or costs of several of the school lunch and child nutrition programs, the committee estimates that the inflationary impact of the legislation is not significant for various reasons.

First, many of these programs are adjusted periodically based on official changes in the various indices on which reimbursements are based to account for inflation. For example, the Congressional Budget Office estimates that the consumer price index will increase by about 5 to 6 percent per year during the next 5 years, and that rates for programs tied to this index will be adjusted by the same increments. Thus, by definition, these programs would exactly keep pace with inflation and cannot outstrip it.

Second, most of the increases in costs for these programs are due to anticipated growth in the number of program participants. This, in fact, is one of the primary purposes of the legislation. For example, CBO estimates that while about half of the growth in costs of the Child Care program is related to the inflation factors built into the CPI, the other half is due to a proposed increase in the number of children to be served. With regard to the WIC program, all of the costs increases (which CBO assumes to be at the maximum authorization levels for each year and which may not actually be appropriated) are associated with an expected increase in the number of participants.

Third, the costs increases estimated for the Special Milk and the Commodities Distribution programs are mainly due to the committee's amendment to use a different index for these programs. While this index is slightly higher than the present one, the committee feels it more accurately reflects actual costs and therefore is not inflationary.

Finally, the committee estimates that the equipment program has no inflationary impact since the authorization level is constant over the 5-year period.

SECTION-BY-SECTION ANALYSIS

SECTION 2: CHILD CARE FOOD PROGRAM

This section of the bill revises and extends Section 17 of the National School Lunch Act, which authorizes the Child Care Food Program.

Subsection (a) provides for a Child Care Food Program for children in institutions providing child care. Such institutions include public or private nonprofit nonresidential organizations. Institutions must have Federal, State or local licensing or be complying with appropriate renewal procedures. Where State or local licensing is not available, the institution must receive funds under Title XX of the Social Security Act or demonstrate that it meets licensing or approval standards established by either the State or local government or by USDA after consultation with H.E.W. The institution must also accept final administrative and financial responsibility for its food service, it cannot have been seriously deficient in operating any of the programs under this Act within a period of time specified by the Secretary, and it must provide adequate supervisory and operational personnel for monitoring and management of the food service.

Subsection (b) authorizes the Secretary to assist the State with funds to provide for the service of meals to children in child care institutions.

Subsection (c) is intended to simplify the program by prescribing one payment rate for each category of institution other than family and group day care home sponsoring organizations. In institutions where at least two-thirds of the children enrolled are eligible for free or reduced price school meals, the State will receive reimbursement for all meals at the reimbursement rates for free school meals. In institutions where between one-third and two-thirds of the children enrolled are eligible for free or reduced price school meals, the State will receive reimbursement for all meals at the rates for reduced-price school meals. In institutions where less than one-third of the children enrolled are eligible for free or reduced price school meals, States will be reimbursed at the rates for paid school meals. This section also allows institutions to elect, in lieu of these new reimbursement procedures, to continue to be reimbursed according to the income of each child as it is stated in current legislation. For meals served in family and group day care homes, the State will receive reimbursement as described in subsection (f)(4).

Subsection (d) provides that institutions must have or be moving toward tax exempt status, or currently be operating a Federal program requiring nonprofit status. Family and group day care homes need not have individual tax exempt certification if they are sponsored by an institution meeting the above requirements. Institutions will be notified of their approval or disapproval within 30 days after their completed application is filed. If their application is incomplete, the State will notify them within 15 days of receipt so that the application can be completed.

Subsection (3) requires the State to provide an appeal procedure for institutions who are aggrieved by the State regarding matters related to their participation in the program.

Subsection (f)(1) requires the State to disburse payments to the institutions to assist in financing the cost of providing meals to participating children. All valid claims from the institution will be paid within 45 days. The State agency will notify the institution within 15 days if the claim is not valid.

Subsection (f)(2) establishes maximum reimbursement rates for each of the three categories of institutions specified in this section. The maximum rates for lunches and suppers correspond to the maximum rates for lunches served under the National School Lunch Program. The disbursement to any institution shall not be less than the sum of the products obtained by multiplying the total number of each type meal served to children by the applicable national average payment rates for each such type of meal at such category of institution.

Subsection (f)(3) allows an institution to be reimbursed according to the income of each child as it is stated in current legislation. Reimbursement to such institutions shall be made under the same procedures for determining reimbursement as prescribed by regulations now in effect.

Subsection (f)(4) provides that family and group day care homes may be provided a flat reimbursement rate to cover the cost of food and labor. Institutions which sponsor family or group day care homes may receive reimbursement for administrative expenses, up to maximum levels prescribed by the Secretary, for such reimbursement. Such reimbursements shall include start-up payments for administrative expenses payable in accordance with procedures prescribed by the Secretary. A family or group day care home may function as its own sponsoring organization.

Subsection (f)(5) requires the State to provide advance payments for the month to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation or an amount estimated by the State agency in the case of new institutions. Advance payments shall be deducted from claims for reimbursement.

Subsection (g)(1) requires meals served to meet minimum nutritional requirements prescribed by the Secretary on the basis of nutritional research and requires the meals to be served free to needy children.

Subsection (g)(2) allows all institutions, except those that provide care to school children outside of school hours, to serve a breakfast, lunch, supper and supplement each day.

Subsection (g)(3) prohibits discrimination against any child.

Subsection (g)(4) requires institutions to use, insofar as practicable, foods designated as being in abundance or foods donated by the Secretary.

Subsection (h) allows participating institutions to receive foods donated by the Department in accordance with their needs. The amount of commodities, or the cash in lieu of commodities, donated to the State will be obtained by multiplying the number of lunches and suppers served in the State that year by the rate for commodities

under Section 6(c) of the Act. The State has the option of receiving cash in lieu of commodities for some or all of their commodities. The State is directed to base its decision on whether to receive cash in lieu of some or all of its commodities on the preferences of institutions in the State unless this is impracticable.

Subsection (i) requires the State to submit for approval by the Department, a State Plan of Child Care Operations which must include the number of institutions participating and not participating in the program, their average daily attendance, the program the State plans to use for expending Federal funds provided under this section, the action planned for conducting audits and for monitoring performance and measuring progress, and other items.

Subsection (j) provides the States with up to 2 percent of the funds used by the State under this program for the purpose of conducting audits of participating institutions. This was enacted as part of Public Law 95-166.

Subsection (k) allows the Secretary to direct the State to provide a standard form of agreement between sponsoring organizations and family and group day care homes for the purpose of specifying rights and responsibilities of each party.

Subsection (l) requires the Secretary to conduct a study of administrative costs for institutions and allows the use of the results of the study in prescribing maximum levels for administrative payments to be allowed per institution.

Subsection (m) requires the Department to conduct a study of food service operations which will include an evaluation of meal quality and a determination as to what the maximum levels of reimbursement should be, depending on various related factors.

Subsection (n) requires the Secretary to study the nature of licensing problems faced by institutions and family and group day care homes.

Subsection (o) requires an amount not to exceed \$2 million to be available for the conduct of studies listed in subsections (l), (m), and (n). It also requires the Secretary to report the results of these studies to Congress within 18 months after the enactment of this Section.

Subsection (p) requires the Secretary to administer the program directly in any State that is not allowed by law or is otherwise unable to disburse funds paid to it under this Section.

Subsection (q)(1) authorizes the appropriation of \$6 million to provide food service equipment assistance for child care institutions.

Subsection (q)(2) provides for the reallocation of unused funds. The subsection also requires that one-fourth of the cost of equipment financed under this program must come from sources within the State except when the institutions are especially needy.

Subsection (q)(3) requires that the State establish criteria for determining which institutions are especially needy and make those criteria available to institutions after they have been submitted in the State Plan and approved by the Department.

Subsection (q)(4) requires the State to notify institutions of the availability of funds for food service equipment assistance within 30 days after the State is notified. The subsection requires the Secretary to establish procedures to assure prompt action by the State on requests for equipment assistance and to prescribe a priority system for the awarding of such funds.

Subsection (q)(5) requires the Secretary to issue regulations authorizing the State to disburse funds directly to a supplier of food service equipment prior to approval of the institution for participation, providing (A) the institution meets all the requirements for participation except for licensing and (B) satisfies all requirements for licensing except for a requirement for food service equipment.

Subsection (r) requires the State to provide training, technical assistance and monitoring in order to expand the program. The State must annually notify each nonparticipating licensed institution of the availability of the program, the requirement for participation and for food service equipment funds, and the application procedures to be followed.

Subsection (s) prohibits expenditures from State or local sources from being diminished as a result of funds received under this subsection for the maintenance of food programs.

Subsection (t) requires State agencies and institutions to keep accounts and records which would enable the Secretary to determine whether there has been compliance with the requirements of this section and to make those records available for inspection for a period of up to five years.

Subsection (u) authorizes an appropriation of funds to carry out this program.

SECTION 3: SPECIAL SUPPLEMENTAL FOOD PROGRAM

This section extends and revises the Special Supplemental Food Program for Women, Infants and Children (WIC). (Section 17 of the Child Nutrition Act of 1966).

Declaration of Purpose (Section 17(a))

This section declares that the Congress finds substantial numbers of pregnant women, infants and children from families with inadequate income at special risk with respect to physical and mental health because of inadequate nutrition or health care, or both. The Special Supplemental Food Program is designed to provide these target populations with supplemental nutrition and nutrition education, up to the specified authorization levels, through local agencies as an adjunct to good health care during critical times of growth and development.

Definitions (Section 17(b))

The "administrative cost" definition has been expanded to include some medical equipment. This equipment is necessary for accurate certification of nutritional risk to determine eligibility.

"Breastfeeding women" are defined as women up to 1 year postpartum who are breastfeeding their infants.

"Children" are defined as persons from their first to their fifth birthday.

A "competent professional authority" is defined as a physician, nutritionist, registered nurse, dietitian, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

The definition of "infants" means persons under 1 year of age.

A "local agency" is defined as a public health or welfare agency or a private, nonprofit health or welfare agency, that directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, band, or group recognized by the Department of the Interior, the Indian Health Service of the Department of Health, Education, and Welfare, or an inter-tribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior.

This subsection defines "nutrition education" as being individual or group sessions and the provision of materials designed to improve health status, to achieve positive change in dietary habits, and to emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural and socio-economic preferences.

The definition of "nutritional risk" is simplified by deleting specific examples of conditions. The concept has been retained that nutritional risk will be based on specific medical or nutritional conditions, including inadequate dietary patterns. The definition has been broadened to include conditions which predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including but not limited to alcoholism and drug addiction.

This subsection defines "Plan of Operation and Administration" as being a document that describes the manner in which the State intends to implement and operate the Program.

"Postpartum women" are defined as women up to 6 months after termination of pregnancy.

"Pregnant women" are defined as women determined to have one or more fetuses in utero.

"Secretary" means the Secretary of Agriculture.

This subsection defines "State agency" as the health department or comparable agency of each State; an Indian tribe, band, or group recognized by the Department of the Interior; an inter-tribal council or group that is the authorized representative of Indian tribes, bands, or groups; or the Indian Health Service of the Department of Health, Education and Welfare.

"Supplemental foods" are defined as foods containing nutrients determined by nutritional research to be needed by the Program's target population as prescribed by the Secretary. With the Secretary's approval States may substitute nutritionally equivalent foods to allow for cultural eating patterns.

Establishment of WIC (Sec. 17(c))

The Secretary is required to implement the Program to assist States through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education to the target population. The Program shall be supplementary to the Food Stamp Program and any program under which foods are distributed to needy families in lieu of food stamps.

This subsection directs the Secretary to make cash grants to States. Subject to the authorization levels, any eligible local agency that applies shall be provided with the funds to implement or expand the program. In determining which local agencies to fund within its share of the authorization, each State shall take affirmative action to fund

neediest areas first, as is currently done under existing regulations. The State shall not impose a ratable reduction in the amount of supplemental food distributed to participants already in the program to provide funds for further expansion.

The simultaneous operation of both CSFP and WIC within the same geographic area is allowed. The Secretary is required to issue regulations which would prevent dual receipt of benefits under WIC and CSFP.

Eligibility of Persons (Sec. 17(d))

Participation in the Program is limited to pregnant, breast-feeding, and postpartum women, infants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

The Secretary is directed to establish income eligibility standards to be used in conjunction with the nutritional risk criteria to determine eligibility for the program. The national income limitation set is the same standard used for reduced-price school meals and the income eligibility determination is required to be made in the same manner as for school meals. Also, a competent professional authority will be responsible for prescribing the appropriate supplemental foods taking into account medical and nutritional conditions and cultural eating patterns.

This subsection also requires persons to be certified in accordance with general procedures prescribed by the Secretary.

Nutrition Education (Sec. 17(e))

This subsection requires nutrition education to be provided to all pregnant, postpartum, and breastfeeding participants and parents or caretakers of infant and child participants. Also, States may provide nutrition education to persons in the Program's target population who are enrolled at local agencies operating the Program but who do not participate in the Program. The Secretary shall prescribe standards to ensure adequate nutrition education services are provided. This section also requires that nutrition education training be provided to persons employed to provide such education.

In addition, the subsection requires the State agency to evaluate nutrition education annually including securing the views of participants and to provide nutrition education materials in other languages in areas with significant non-English speaking populations.

The subsection also requires the Secretary, after submitting proposed nutrition education materials to the Secretary of HEW for comment, to issue such materials for use in the Program.

Administration (Sec. 17(f))

State agencies are directed to annually submit to the Secretary by a date specified by the Secretary, a Plan of Program Operation and Administration prior to receiving funds. The Plan must include: (1) a description of how the State will distribute administrative funds to local agencies including the distribution of start-up funds; (2) a description of the financial management system; (3) a description of methods for determining nutritional risk; (4) a budget for administrative funds; (5) the staffing pattern; (6) nutrition education goals and action plans, including description of methods for meeting migrant and

Indian needs; (7) a plan to provide benefits to migrants and Indians; (8) a list of all areas and special populations, in priority order based on relative need, within the jurisdiction of the State agency and the State agency's plans to initiate or expand operations under the program in areas most in need of supplemental foods, including plans to inform nonparticipating local agencies about the availability and benefits of the program and the availability of technical assistance in implementing the program, and a description of how the State agency will take all reasonable actions to identify potential local agencies and encourage such agencies to implement or expand the program within one year from submission of the plan in the top third of all areas unserved or partially served; (9) a description of how the State's delivery system will provide in accordance with the Secretary's standards reasonable access for receipt of supplemental foods; (10) a plan for informing eligible persons of the program; (11) a description of how the State will coordinate with the Food Stamp Program and will coordinate special counseling services for participants with Program operations; and (1X) a copy of the State developed procedure manual for the Program. No plan shall be approved which permits a person to participate in both the Special Supplemental Food Programs and the Commodity Supplemental Food Program.

State agencies would be required to conduct public hearings to enable the general public to participate in the development of State Plans. Hearings would have to take place at least one month prior to the submission of the State Plan to the Governor.

This subsection requires the Secretary to establish procedures to facilitate Program participation of migrants as they move from State to State. In addition, this subsection requires the State agency to be responsible for administration of the Program for migrant populations within its jurisdiction.

State agencies are required to submit to the Secretary monthly financial and participation reports.

State and local agencies operating the Program are also required to keep accounts and records including medical as may be necessary to enable the Secretary to determine whether there has been compliance and to evaluate the benefits of nutritional assistance. This subsection requires that these accounts and records be made available for inspection and audit and that they be preserved for a period of time not in excess of 5 years.

This subsection specifies that the State agency upon receipt of a local agency application and the Secretary upon receipt of a State agency application for participation shall notify applicant agency in writing within 30 days of approval or disapproval. It further states that within 15 days after receipt of an incomplete application the approving agency shall notify the applicant agency for the purpose of requesting additional information.

This subsection requires local agencies participating in the WIC Program to notify persons of their eligibility to receive benefits within 20 days of their request to participate; however, the Secretary will establish shorter notification times for special risk groups who must receive benefits more expeditiously.

The subsection also requires States in cooperation with local agencies to publicly announce eligibility criteria and the location of local

agencies on at least an annual basis. This subsection also requires such information to be distributed to offices and organizations that have contact with the target population, including government offices, public and private health and welfare organizations, farmworker, Indian, religious, and community groups.

The subsection mandates States to establish fair hearing procedures for applicants, participants, or local agencies aggrieved by an action of the State or local agency under the provisions of the State plan.

This subsection allows a person's certification of eligibility to remain valid for the period for which the individual was certified as eligible, when the person moves from one program area to another. This means that a person does not need to have a new certification of eligibility in the new area, but does not guarantee that a WIC slot would be available in the new area.

The Secretary is required to set State agency standards for the proper, effective, and efficient administration of the program, including standards that will ensure sufficient State agency staff. This subsection also provides the Secretary with authority to apply sanctions if a State has failed without good cause to administer the Program consistent with this act, or to carry out the State Plan. The Secretary may withhold administrative funds provided that upon corrective action during a fiscal year funds withheld for the fiscal year shall be returned.

This subsection authorizes the Secretary to prescribe the supplemental foods to be made available. It requires the Secretary to the degree possible to assure that the fat, sugar, and salt content of the prescribed foods is moderate and that the use of commercially available products specifically designed for women or infants shall be available at the discretion of the Secretary if the products are commercially available or are justified to and approved by the Secretary based on clinical tests performed in accordance with standards prescribed by the Secretary.

Authorization of Appropriation (Sec. 17(g))

This subsection authorizes \$650 million for fiscal year 1979, \$850 million for fiscal year 1980, \$900 million for fiscal year 1981, and \$950 million for fiscal year 1982.

Of the sums appropriated for any fiscal year for the Program, one-half of one percent, not to exceed \$3 million shall be available to the Secretary for the purpose of evaluating Program performance, health benefits, and the administration of pilot projects. This includes projects designed to meet the special needs of migrants, Indians, and rural populations.

Administrative Funds (Sec. 17(h))

This subsection authorizes the Secretary to make 20 percent of the funds provided in each fiscal year (exclusive of the funds provided for evaluation and pilot projects) available for State and local agency administrative costs. This section also allows the Secretary to exceed the 20 percent cap on administrative funds as a result of reallocation when necessary for proper, efficient and effective administration of the Program.

The Secretary is required, for each of the fiscal years 1979 through 1982, to allocate administrative funds to each State on the basis of a

formula determined by the Secretary which shall provide for a minimum amount and which shall be designed to consider State needs such as the number and caseload of local agencies.

This subsection prescribes that States shall provide, from their allocation of administrative funds, funds to local agencies for administrative costs. States shall distribute administrative funds to locals in accordance with standards to be developed by the State agency in cooperation with several local agencies and subject to the Secretary's approval. The allocation of funds to local agencies shall take into account staffing needs, density of population, number of persons served, availability of administrative support from other sources, and such other factors as the State agency determines appropriate. These standards shall be included in the State Plan of Operation.

This subsection requires State agencies to finance in advance the administrative costs necessary to successfully initiate the Program during the first 3 months of a local agency's operation or until projected caseload level is reached.

Distribution of Funds (Sec. 17(i))

This subsection provides that the amount of funds specified in any year in which funds are authorized shall be divided among the States on the basis of a formula determined by the Secretary. Each State's allocation shall be the State's authorized operational level for the year, but the Secretary shall reallocate funds periodically if a State is unable to spend its allocation. The Secretary may use a portion of the State's allocation to purchase supplemental funds for donation to the State.

For purposes of this formula, Indians shall be considered a part of the State population if the State agency administers the Program for Indians. Otherwise, the population of the tribes being served by an agency other than the Health Department of a State will not be included in the formula used to fund the State, and those funds will be provided to the agency serving the Indians.

Annual Report of Migrants (Sec. 17(j))

By October 1 of each year the Secretary is required to prepare a report describing plans to ensure to the maximum degree possible continuous WIC Program benefits to migrants. This report is to be made available to the National Advisory Council on Maternal, Infant and Fetal Nutrition.

National Advisory Council (Sec. 17(k))

This subsection provides authority for the establishment of a National Advisory Council on Maternal, Infant and Fetal Nutrition and authorizes the appointment of 20 members to serve on the Council. This subsection specifies that members will be appointed by the Secretary. Members representing Indians and migrants have been added, as well as one additional parent participant in either the Special Supplemental Food Program or the Commodity Supplemental Food Program. Also added are State and local representatives of the Commodity Supplemental Food Program and a representative of a public interest organization concerned with the Special Supplemental Food Program. The food retail sales representative has been deleted.

This subsection specifies the tenure of duty for members of the Council.

The Secretary is authorized to designate a member to serve as Chairman and one to serve as Vice Chairman of the Council. The Council shall meet at the call of the Chairman but not less than annually. The number of members which constitute a quorum is also specified.

This subsection specifies that the Council shall make a continuing study of the Special Supplemental Food Program and related programs to determine how the Program may be improved. The subsection further directs the Council to submit a report in even numbered years to the President and the Congress beginning in fiscal year 1980. The report is to contain the results of the Council's study and its recommendations.

The Secretary is required to provide the Council with technical and other assistance, including the secretarial and clerical assistance necessary for the Council to carry out its functions.

The subsection provides that members of the Council shall serve without compensation but specifies the expenses for which members receive reimbursement. It also permits certain compensation in advance for parent participants for losses incurred such as child care expenses and lost wages.

Commodities (Sec. 17(1))

This subsection allows the Secretary to purchase and distribute commodities for use in the program.

REDUCED-PRICE LUNCHES

Section 4 sets the reimbursement rate for reduced-price lunches 20 cents below the rate for free lunches. However, in States where all schools charge a uniform price for reduced-price lunches that is less than 20 cents, the reimbursement rate would be set at such a level (not to exceed an amount 10 cents below the free lunch reimbursement rate) that total revenue from the reimbursement for reduced-price lunches plus the charge paid by reduced-price students would equal the free lunch reimbursement rate.

CHANGES IN COMMODITY INDEXES

Section 5 of the bill changes the index on which the reimbursement rate for milk in the Special Milk Program is adjusted from the "food away from home" series of the Consumer Price Index, to the wholesale price of milk.

The annual adjustment in the commodity donation rate for the school lunch program would be based on changes in the Department of Agriculture's Wholesale Price Index for Food Used in Schools and Institutions, rather than changes in the "food away from home" series of the Consumer Price Index.

Reimbursement rates in child nutrition programs that are indexed by the Consumer Price Index would be indexed by changes in the new Consumer Price Index for all Urban Consumers.

SPECIAL MILK PROGRAM

Section 5 amends the Special Milk Program to allow children who qualify for free meals to receive an extra half pint of free milk upon their request.

SCHOOL BREAKFAST EXPANSION

Section 6 eliminates the requirements in current law for schools serving both lunches and breakfasts to allocate all costs between the two programs and account for each program separately. This change will reduce bookkeeping and paperwork burdens significantly.

The section makes equipment assistance more accessible to schools that will use equipment to institute a breakfast program by: (1) Making such schools eligible for "reserved" equipment funds; (2) Increasing the portion of equipment funds that are "reserved" from 33½ percent to 50 percent; (3) Increasing the authorization for equipment funds from \$40 million to \$75 million.

Schools that are required to serve breakfasts under any Federal or State law will be eligible to receive the Federal reimbursement provided to "especially needy" schools. This allows these schools to receive up to 10 cents more per free breakfast if their costs justify this higher level of support.

The bill provides that by the beginning of 1979-80 school year, public schools participating in the school lunch program during the 1977-78 school year or any future year, shall operate the school breakfast program if over 50 percent of the lunches served at the school are served free or at a reduced price. This percentage is set at 45 percent for the 1980-81 school year, and at 40 percent for all succeeding school years. Schools enrolling less than 125 students and private schools are exempt from this requirement. The requirement also does not apply to residential child care institutions.

The committee bill does not provide for the withholding of any Federal funds for schools that do not comply the requirement to operate the breakfast program.

If a school is required to institute a breakfast program but would experience difficulty in doing to, the school district may start the program in another school (or schools) instead, if the "alternate" school (or schools) enrolled as many needy children. This means that a school which is not required to serve breakfasts because it does not contain a high enough percentage of needy children may substitute for another school which is subject to the requirement, if the substitute school has an equal or greater number of needy children. This is intended to provide school districts more administrative flexibility in satisfying the requirement, while still assuring that as many needy children are reached.

STATE ADMINISTRATIVE EXPENSES

Section 7 of the bill increases funding for State Administrative Expenses (SAE) in operating child nutrition programs. Presently, the total funding for SAE nationwide is set at no less than 1 percent nor more than 1½ percent of the funds spent the second previous fiscal year on school food programs, and the special milk, child care and equipment programs. This section raises the minimum funding level to 1½ percent.

This section also prescribes new methods for allocating funds to States, and raises the minimum State allocation from \$75,000 to \$100,000.

Finally, this section provides for an increase in State Administrative funds for operating the summer food service program.

INCOME POVERTY GUIDELINES

Section 8 of the bill provides for the use of one uniform set of poverty guidelines for all USDA food programs and sets a uniform national income limit for free school meals at 125 percent of the poverty guidelines. Currently, the standards may be set from 100 percent to 125 percent of the poverty guidelines.

STUDY ON MENU CHOICES

Section 9 of the bill requires the Secretary to conduct a study on the cost and feasibility of requiring schools to offer a choice of menu items within the required meal patterns. The Secretary would be authorized to issue regulations based on the results of the study.

OUTLYING AREAS

Section 10 of the bill provides for adjustments in reimbursement rates for Alaska, Guam, American Samoa, Puerto Rico, Hawaii, the Virgin Islands, Trust Territories of the Pacific and Commonwealth of the Northern Mariana Islands.

Section 10 provides criminal penalties for fraud or embezzlement in connection with the child nutrition programs.

Section 10 defines "school year" as the annual period from July 1 through June 30.

INNOVATION PROJECTS

Section 11 authorizes the Secretary to withhold up to 10 percent of the funds appropriated for nutrition education and training programs in order to carry out innovation research and demonstration projects. These funds are available to the Secretary only if the States are assured of receiving at least \$75,000 for their nutrition education programs.

Section 12 directs the Secretary to issue regulations to implement Section 3 of this Act within 120 days of enactment. This section also authorizes regulations relating to the child care food program and the WIC program which were in effect prior to enactment of this bill to remain in effect until replaced by regulations issued to implement Sections 2 and 3 of this Act.

Section 13 provides effective dates for the various provisions of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

NATIONAL SCHOOL LUNCH ACT

DIRECT FEDERAL EXPENDITURES

SEC. 6.(a) * * *

(e) For the fiscal year ending June 30, 1975, and subsequent school years, the national average value of donated foods, or cash payments in lieu thereof, shall not be less than 10 cents per lunch, and that amount shall be adjusted on an annual basis each school year after June 30, 1975, to reflect changes in [the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor]; *the Department of Agriculture's Wholesale Price Index for Food Used in Schools and Institutions. The index shall be computed and published by the Secretary using five major food components in the Bureau of Labor Statistics' Wholesale Price Index (cereal and bakery products (021), meats, poultry and fish (022), dairy products (023), processed fruits and vegetables (024), and fats and oils (27)). Each component shall be weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a three-month simple average value of the Department of Agriculture's Wholesale Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest one-fourth cent. Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates. Notwithstanding any other provision of this section, not less than 75 per centum of the assistance provided under this subsection (e) shall be in the form of donated foods for the school lunch program.*

NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS

SEC. 9. (a) * * *

(b)(1) No later than June 1 of each fiscal year, the Secretary shall issue revised income poverty guidelines for use during the subsequent 12-month period from July through June. [Such revisions shall be made by multiplying the income poverty guideline currently in effect by the change in the Consumer Price Index for the 12-month period ending in April of such fiscal year: *Provided, That such revision for use from July 1976 through June 1977 shall be made by multiplying the income poverty guideline currently in effect by the change between the average 1974 Consumer Price Index and the Consumer Price Index for April 1976.*] *The income poverty guidelines for the period commencing July 1, 1978, shall be made as up to date as possible by multiplying the income poverty guidelines for 1977 by the change between the average 1977 Consumer Price Index and the Consumer Price Index of March 1978, using the most current procedures which have been used by the Office of Management and Budget, and the income poverty guidelines for future*

periods shall be similarly adjusted. Any child who is a member of a household which has an annual income not above the applicable family-size income level set forth in the income poverty guidelines prescribed by the Secretary shall be served a free lunch. Following the announcement by the Secretary of the income poverty guidelines for each 12-month period, each State educational agency shall prescribe the income guidelines, by family size, to be used by schools in the State during such 12-month period in making determinations of those eligible for a free lunch as prescribed in this section. The income guidelines for free lunches [to be prescribed by each State educational agency shall not be less than the applicable family-size income levels in the income poverty guidelines prescribed by the Secretary and shall not be more than 25 per centum above such family-size income levels] shall be prescribed at 25 percent above the applicable family size income levels in the income poverty guidelines prescribed by the Secretary. Each fiscal year, each State educational agency shall also prescribe income guidelines, by family size, to be used by schools in the State during the 12-month period from July through June in making determinations of those children eligible for a lunch at a reduced price, not to exceed 20 cents. Such income guidelines for reduced-price lunches shall be prescribed at 95 per centum above the applicable family size income levels in the income poverty guidelines prescribed by the Secretary. Any child who is a member of a household, if that household has an annual income which falls between (A) the applicable family size income level of the income guidelines for free lunches prescribed by the State educational agency and (B) 95 per centum above the applicable family size income levels in the income poverty guidelines prescribed by the Secretary, shall be served a reduced price lunch at a price not to exceed 20 cents. Local school authorities shall publicly announce such income guidelines on or about the opening of school each fiscal year, and shall make determinations with respect to the annual incomes of any household solely on the basis of a statement executed in such form as the Secretary may prescribe by an adult member of such household: *Provided*, That such local school authorities may for cause seek verification of the data in such application. No physical segregation of or other discrimination against any child eligible for a free lunch or a reduced price lunch shall be made by the school nor shall there be any overt identification of any child by special tokens or tickets, announced or published lists of names, or by other means. For purposes of this subsection, "Consumer Price Index" means the Consumer Price Index for All Urban Consumers published each month by the Bureau of Labor Statistics of the Department of Labor.

* * * * *

SPECIAL ASSISTANCE

SEC. 11. (a) Except as provided in section 10 of this Act, in each fiscal year each State educational agency shall receive special-assistance payments in an amount equal to the sum of the product obtained by multiplying the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to subsection 9(a) of this Act) served free to

children eligible for such lunches in schools within that State during such fiscal year by the special-assistance factor for free lunches prescribed by the Secretary for such fiscal year and the product obtained by multiplying the number of lunches served at a reduced price to children eligible for such reduced-price lunches in schools within that State during such fiscal year by the special-assistance factor for reduced-price lunches prescribed by the Secretary for such fiscal year. In the case of any school which determines that at least 80 percent of the children in attendance during a school year (hereinafter in this sentence referred to as the "first school year") are eligible for free lunches or reduced-price lunches, special-assistance payments shall be paid to the State educational agency with respect to that school, if that school so requests for the school year following the first school year on the basis of the number of free lunches or reduced-price lunches as the case may be that are served by that school during the school year for which the request is made, to those children who were determined to be so eligible in the first school year and the number of free lunches and reduced-price lunches served during that year to other children determined for that year to be eligible for such lunches. In the case of any school that (1) elects to serve all children in that school free lunches under the school lunch program during any period of three successive school years and (2) pays, from sources other than Federal funds, for the costs of serving such lunches which are in excess of the value of assistance received under this Act with respect to the number of lunches served during that period special-assistance payments shall be paid to the State educational agency with respect to that school during that period on the basis of the number of lunches determined under the succeeding sentence. For purposes of making special-assistance payments in accordance with the preceding sentence the number of lunches served by a school to children eligible for free lunches and reduced-price lunches during each school year of the three-school-year period shall be deemed to be the number of lunches served by that school to children eligible for free lunches and reduced-price lunches during the first school year of such period unless that school elects for purposes of computing the amount of such payments, to determine on a more frequent basis the number of children eligible for free and reduced-price lunches who are served lunches during such period. For the fiscal year beginning July 1, 1973, the Secretary shall prescribe a special-assistance factor for free lunches of not less than 45 cents and a special-assistance factor for reduced-price lunches which shall be [10] 20 cents less than the special-assistance factor for free lunches [1], except that, if in any State all schools charge students a uniform price for reduced-price lunches, and such price is less than 20 cents, the special assistance factor prescribed for reduced price lunches in such State shall be equal to the special assistance factor for free lunches as reduced by either 10 cents or the price charged for reduced price lunches in such State, whichever is greater. The Secretary shall prescribe on July 1 of each fiscal year, and on January 1, of each fiscal year, semiannual adjustments in the national average rates for lunches served under section 4 of the National School Lunch Act and the special-assistance factor for the lunches served under section 11 of the National School Lunch Act and the national average rates for breakfasts served under section 4 of the Child Nutrition Act of 1966, as amended, that shall

reflect changes in the cost of operating a school lunch and breakfast program under these Acts as indicated by the change in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor: *Provided* That the initial such adjustment shall reflect the change in the series for food away from home during the period September 1973, through November 1973: *Provided further*, That each subsequent adjustment shall reflect the changes in the series for food away from home for the most recent six-month period for which such data are available: *Provided further*, That such adjustments shall be computed to the nearest one-fourth cent. Notwithstanding the foregoing two sentences, (1) for the fiscal year beginning July 1, 1973, no special assistance factor under this section 11 shall, for any State, be less than the average reimbursement paid for each free lunch (in the case of the special assistance factor for free lunches), or for each reduced price lunch (in the case of the special assistance factor for reduced price lunches) in such State under this section in the fiscal year beginning July 1, 1972; and (2) adjustments required by the sentence immediately preceding this sentence shall be based on the special assistance factors for the fiscal year beginning July 1, 1973, as determined without regard to any increase required by the application of this sentence.

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MISCELLANEOUS PROVISIONS AND DEFINITIONS

SEC. 12. (a) * * *

* * * * *

(d) For the purposes of this Act—

(1) "State means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands-Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(2) "State educational agency" means, as the State legislature may determine, (A) the chief State school officer (such as the State superintendent of public instruction, commissioner of education, or similar officer), or (B) a board of education controlling the State department of education; except that in the District of Columbia it shall mean the Board of Education.

(3) "Nonfood assistance" means equipment used by schools in storing, preparing, or serving food for school children.

(4) "Participation rate" for a State means a number equal to the number of lunches, consisting of a combination of foods and meeting the minimum requirements prescribed by the Secretary pursuant to section 9, served in the fiscal year beginning two years immediately prior to the fiscal year for which the Federal funds are appropriated by schools participating in the program under this Act in the State, as determined by the Secretary.

(5) "Assistance need rate" (A) in the case of any State having an average annual per capita income equal to or greater than the average annual per capita income for all the States, shall be 5; and (B) in the case of any State having an average annual per capita

income less than the average annual per capita income for all the States, shall be the product of 5 and the quotient obtained by dividing the average annual per capita income for all the States by the average annual per capita income for all the States by the average annual per capita income for such State, except that such product may not exceed 9 for any such State. For the purposes of this paragraph (i) the average annual per capita income for any State and for all the States shall be determined by the Secretary on the basis of the average annual per capita income for each State and for all the States for the three most recent years for which such data are available and certified to the Secretary by the Department of Commerce; and (ii) the average annual per capita income for American Samoa shall be disregarded in determining the average annual per capita income for all the States for periods ending before July 1, 1967.

(6) "School" means (A) any public or nonprofit private school of high school grade or under, (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded), and (C) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico. For purposes of clauses (A) and (B) of this paragraph, the term "nonprofit", when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1954.

(7) "School year" means the annual period [determined in accordance with regulations issued by the Secretary] from July 1 through June 30.

(e) The value of assistance to children under this Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

(f) *No provision of this Act or of the Child Nutrition Act of 1966 shall require any school receiving funds under this Act and the Child Nutrition Act of 1966 to account separately for the costs incurred in the school lunch and school breakfast programs. In no event, however, shall reimbursement to schools exceed the net cost of operating both the lunch and breakfast programs, taking into account the total costs and total income of both programs.*

(g) *In providing assistance for school breakfasts and lunches served in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, the Secretary shall establish appropriate adjustments for each such State to the national average payment rates prescribed under sections 4 and 11 of this Act and section 4 of the Child Nutrition Act of 1966, to reflect the differences between the costs of providing lunches and breakfasts in those States and the costs of providing lunches and breakfasts in all other States.*

(h) *Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property which are the subject of a grant or other form of assistance under this Act or the Child Nutrition Act of 1966,*

whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year or both.

SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

SEC. 13. (a) * * *

(b)(1) Payments to service institutions shall equal the full cost of food service operations (which cost shall include the cost of obtaining, preparing, and serving food, but shall not include administrative costs), except that such payments to any institution shall not exceed (1) 85.75 cents for each lunch and supper served; (2) 47.55 cents for each breakfast served; or (3) 22.50 cents for each meal supplement served: *Provided*, That such amounts shall be adjusted each January 1 to the nearest one-fourth cent in accordance with the changes for the twelve-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for *All Urban Consumers* published by the Bureau of Labor Statistics of the Department of Labor: *Provided further*, That the Secretary may make such adjustments in the maximum reimbursement levels as the Secretary determines appropriate after making the study prescribed in paragraph (4) of this subsection.

(k)(1) The Secretary shall pay to each State for its administrative costs incurred under this section in any fiscal year an amount equal to (A) 20 percent of the first \$50,000 in funds distributed to that State for the program in the preceding fiscal year; (B) 10 percent of the next **[\$50,000 in funds]** \$100,000 distributed to that State for the program in the preceding fiscal year; (C) 5 percent of the next **[\$100,000 in funds]** distributed to that State for the program in the preceding fiscal year; and (D) 2 percent of any remaining funds distributed to that State for the program in the preceding fiscal year: *Provided*, That such amounts may be adjusted by the Secretary to reflect changes in the size of that State's program since the preceding fiscal year **[\$250,000 in funds distributed to that State for the program in the preceding fiscal year, and (D) 2½ percent of any remaining funds distributed to that State for the program in the preceding fiscal year, except that such amounts may be adjusted by the Secretary to reflect changes in the size of that State's program since the preceding fiscal year.**

[CHILD CARE FOOD PROGRAM

[SEC. 17.² (a)(1) There is hereby authorized to be appropriated such sums as are necessary for the fiscal year ending June 30, 1976, the period July 1, 1976, through September 30, 1976, the fiscal year

ending September 30, 1977, and the fiscal year ending September 30, 1978, to enable the Secretary to formulate and carry out a program to assist States through grants-in-aid and other means to initiate, maintain, or expand nonprofit food service programs for children in institutions providing child care.

[(2) For purposes of this section, the term "institution" means any public or private nonprofit organization where children are not maintained in permanent residence including, but not limited to, day care centers, settlement houses, recreation centers, family day care programs, Head Start centers, Homestart programs, and institutions providing day care services for handicapped children. No institution shall be eligible to participate in this program unless it has either local, State, or Federal licensing or approval as a child care institution, or can satisfy the Secretary that its standards are no less comprehensive than the Federal interagency day care requirements as approved by the Department of Health, Education, and Welfare, the Office of Economic Opportunity, and the Department of Labor on September 23, 1968. An institution may be approved for funding under this section only if, under conditions established by the Secretary, such institution is moving toward compliance with the requirements for tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1954, or is currently operating a federally funded program requiring nonprofit status. For purposes of this section, the term "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands. Any eligible institution shall receive the child care food program upon its request.

[(b) For each fiscal year beginning with the fiscal year ending June 30, 1976, the Secretary shall make child care food payments no less frequently than on a monthly basis to each State educational agency in an amount no less than the sum of the products obtained by multiplying (A) the number of breakfasts served in child care food programs within that State by the national average payment rate for breakfasts under section 4 of the Child Nutrition Act of 1969, (B) the number of breakfasts served in child care food programs within that State to children from families whose incomes meet the eligibility criteria for free school meals by the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966, (C) the number of breakfasts served in child care food programs within that State to children from families whose income meet the eligibility criteria for reduced price school meals by the national average payment rate for reduced price school breakfasts under section 4 of the Child Nutrition Act of 1966, (D) the number of lunches and suppers served in child care food programs within that State by the national average payment rate for lunches under section 4 of the National School Lunch Act, (E) the number of lunches and suppers served in child care food programs within that State to children from families whose incomes meet the eligibility criteria for free school meals by the national average payment rate for free school lunches under section 11 of the National School Lunch Act, (F) the number of lunches and suppers served in child care food program in that State to children whose families meet the eligibility criteria for reduced price school meals by the national

average payment factor for reduced price lunches under section 11 of the National School Lunch Act, (G) the number of snacks served in child care food programs in that State by 5 cents, (H) the number of snacks served in child care food programs in that State to children from families whose incomes meet the eligibility criteria for free school meals by 15 cents, and (I) the number of snacks served in child care food programs in that State to children from families whose incomes meet the eligibility criteria for reduced price school meals by 10 cents. The rates established pursuant to clauses (G), (H), and (I) shall be adjusted semiannually to the nearest one-fourth cent by the Secretary to reflect the changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor. The initial such adjustment shall become effective January 1, 1976, and shall reflect changes in the series for food away from home during the period June through November 1975. Reimbursement for meals provided under this section shall **not** be dependent upon the collection of moneys from participating children.

[(c) Meals served by institutions participating in the program under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research. Such meals shall be served free to needy children. No physical segregation or other discrimination against any child shall be made because of his inability to pay, nor shall there be any overt identification of any such child by special tokens or tickets, announced or published lists of names, or other means. No institution shall be prohibited from serving a breakfast, lunch, dinner, and snack to each eligible child each day.

[(d) Funds paid to any State under this section shall be disbursed by the State educational agency to institutions approved for participation on a nondiscriminatory basis to reimburse such institutions for their costs in connection with food service operations, including labor and administrative expenses. All valid claims from such institutions shall be paid within 30 days.

[(e) Irrespective of the amount of funds appropriated under this section, foods available under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) or purchased under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), or section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1), shall be donated by the Secretary of Agriculture to institutions participating in the child care food program in accordance with the needs as determined by authorities of these institutions for utilization in their feeding programs. The amount of such commodities (or, upon the application of a State educational agency, cash in lieu of commodities in such amounts as may be provided in appropriations Act) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions during that school year by the rate for commodities and cash in lieu thereof established for that school year in accordance with the provisions of section 6(e) of the National School Lunch Act.

[(f) If in any State the State educational agency is not permitted by law or is otherwise unable to disburse the funds paid to it under this section to any institution in the State, the Secretary shall disburse the funds so withheld directly to institutions in the State for the same

purpose and subject to the same conditions as are required of a State educational agency disbursing funds made available under this section.

[(g) Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

[(h) There is hereby authorized to be appropriated for any fiscal year such sums as may be necessary for the Secretary's administrative expenses under this section.

[(i) States, State educational agencies, and institutions participating in programs under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations hereunder. Such accounts and records shall at all times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of 5 years, as the Secretary determines necessary.

[(j)(1) Of the sums appropriated for any fiscal year pursuant to the authorization contained in this section, \$3,000,000 shall be available to the Secretary for the purposes of providing, during each such fiscal year, nonfood assistance for the child care food program. The Secretary shall apportion among the States during each fiscal year the aforesaid sum of \$3,000,000: *Provided*, That such an apportionment shall be made according to the ratio among the States of the number of children below age 6 who are members of households which have an annual income not above 125 per centum of the applicable family-size income level set forth in the income poverty guideline prescribed by the Secretary under section 9(b) of this Act.

[(2) If any State cannot utilize all of the funds apportioned to it under the provisions of this section, the Secretary shall make further apportionments to the remaining States. Payments to any State of funds apportioned under the provisions of this subsection for any fiscal year shall be made upon condition that at least one-fourth of the cost of equipment financed under this section shall be borne by funds from sources within the State, except that such condition shall not apply with respect to funds used under this section to assist institutions determined by the State to be especially needy.

[(k) The regulations issued by the Secretary to carry out this section shall be issued and become effective not later than 90 days after the date of enactment of the National School Lunch Act and Child Nutrition Act of 1966 Amendments of 1975. During the period prior to the effective date of the regulations, the Secretary is authorized to conduct a food service program in the same manner and under the same conditions and limitations as the special food service program for children was conducted under section 13 of the National School Lunch Act during the fiscal year ending June 30, 1975. Notwithstanding the foregoing, the child care food payment rates provided in subsection (b) of this section and the provisions of subsection (e) of this section shall become effective on the date of enactment of the National School Lunch Act and Child Nutrition Act of 1966 Amendments of 1975.]

CHILD CARE FOOD PROGRAM

Sec. 17. (a) The Secretary is authorized to carry out a program to assist States through grants-in-aid and other means to initiate, maintain, and

expand nonprofit food service programs for children in institutions providing child care. For purposes of this section, the term "institution" means any public or private nonprofit organization providing nonresidential child care, settlement houses, recreational centers, Head Start centers, and institutions providing child care facilities for handicapped children. In addition, the term "institution" shall include programs developed to provide day care outside school hours for schoolchildren, and public or nonprofit private organizations that sponsor family or group day care homes. No institution shall be eligible to participate in the program unless it—

(1) has Federal, State, or local licensing or approval, or is complying with appropriate renewal procedures as prescribed by the Secretary and the State has no information indicating that the institution's license will not be renewed; or where Federal, State, or local licensing or approval is not available, it receives funds under title XX of the Social Security Act or otherwise demonstrates that it meets either any applicable State or local government licensing or approval standards or approval standards established by the Secretary after consultation with the Secretary of Health, Education, and Welfare; and

(2) satisfies the following criteria:

(A) accepts final administrative and financial responsibility for management of an effective food service;

(B) has not been seriously deficient in its operation of the child care food program, or other programs under this Act or the Child Nutrition Act of 1966, for a period of time specified by the Secretary; and

(C) will provide adequate supervisory and operational personnel for overall monitoring and management of the child care food program.

(b) For the fiscal year ending September 30, 1979, and for each subsequent fiscal year, the Secretary shall provide cash assistance to States for meals served in the manner specified in subsection (c) of this section, except that, in any fiscal year, the aggregate amount of assistance provided to a State by the Secretary under this section shall not exceed the sum of (1) the Federal funds provided by the State to participating institutions within the State for that fiscal year and (2) any funds used by the State pursuant to section 10 of the Child Nutrition Act of 1966.

(c) The Secretary shall provide assistance to each State in the following manner:

(1) For meals served to children in institutions (other than family and group day care home sponsoring organizations) where no less than two-thirds of the children enrolled are members of families that satisfy the income standards for free and reduced-price school meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(A)(i) the total number of breakfasts served in the State in such institutions by (ii) the sum of the national average payment rate for breakfasts and the national average payment rate for free breakfasts under section of the Child Nutrition Act of 1966;

(B)(i) the total number of lunches and suppers served in the State in such institutions by (ii) the sum of the national average

payment rate for lunches under section 4 of this Act, and the national average payment rate for free lunches under section 11 of this Act; and

(C)(i) the total number of supplements served in the State in such institutions by (ii) the national average payment rate for supplements served in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in such institutions shall be 23.75 cents. For supplements served in such institutions thereafter the Secretary shall prescribe adjustments to such national average payments rate on July 1 and January 1 of each year. Such adjustments shall be computed to the nearest one-fourth cent and shall be based on changes, measured over the most recent six-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers.

(2) For meals served to children in institutions (other than family and group day care home sponsoring organizations) where less than two-thirds but no more than one-third of the children enrolled are members of families that satisfy the income standards for free and reduced-price school meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(A)(i) the total number of breakfasts served in the State in institutions by (ii) the sum of the national average payment rate for reduced-price breakfasts under section 4 of the Child Nutrition Act of 1966:

(B)(i) the total number of lunches and suppers served in the State in such institutions by (ii) the sum of the national average payment rate for lunches under section 4 of this Act and the national average payment rate for reduced-price lunches under section 11 of this Act; and

(C)(i) the total number of supplements served in the State in such institutions by (ii) the national average payments rate for supplements served in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in such institutions shall be 18 cents. The Secretary shall prescribe adjustments to this national average payment rate on July 1 and January 1 of each year. Such adjustments shall be computed to the nearest one-fourth cent and shall be based on changes, measured over the most recent six-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers.

(3) For meals served to children in institutions (other than family and group day care home sponsoring organizations and institutions electing to use the optional reimbursement procedures set forth in subsection (f)(3) of this section) where less than one-third of the enrolled children are members of families that satisfy the income standards for free and reduced-price school meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(A)(i) the total number of breakfasts served in the State in such institutions by (ii) the national average payment rate for breakfasts under section 4 of the Child Nutrition Act of 1966;

(B)(i) the total number of lunches and suppers served in the State in such institutions by (ii) the national average payment rate for lunches under section 4 of this Act; and

(C)(i) the total number of supplements served in the State in such institutions by (ii) the national average payment rate for supplements in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in such institutions shall be 6 cents. The Secretary shall prescribe adjustments to this national average payment rate on July 1 and January 1 of each year. Such adjustments shall be computed to the nearest one-fourth cent and shall be based on changes, measured over the most recent six-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers.

(4) For meals served to children in institutions electing to use the reimbursement procedures under subsection (f)(3) of this section, each State shall receive assistance in the following manner:

(A) for meals served to children who are members of families that satisfy the income standards for free school meals in accordance with section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(i)(I) the number of breakfasts served by (II) the sum of the national average payment rate for breakfasts and the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966;

(ii)(I) the number of lunches and suppers served by (II) the sum of the national average payment rate for lunches under section 4 of this Act and the national average payment rate for free lunches under section 11 of this Act; and

(iii)(I) the number of supplements served by (II) the national average payment rate for supplements determined under clause (C) of paragraph (1) of this subsection;

(B) for meals served to children who are members of families that satisfy the income standards for reduced-price meals in accordance with section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(i)(I) the number of breakfasts served by (II) the sum of the national average payment rate for breakfasts and the national average payment rate for reduced-price breakfasts under section 4 of the Child Nutrition Act of 1966;

(ii)(I) the number of lunches and suppers served by (II) the sum of the national average payment rate for lunches under section 4 of this Act and the national average payment rate for reduced-price lunches under section 11 of this Act;

(iii)(I) the number of supplements served by (II) the national average payment rate for supplements determined under clause (C) of paragraph (2) of this subsection; and

(C) for meals served to all other children in such institutions, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(i)(I) the number of breakfasts served to such children by (II) the national average payment rate for breakfasts under section 4 of the Child Nutrition Act of 1966;

(ii)(I) the number of lunches and suppers served to such children by (II) the national average payment rate for lunches under section 4 of this Act; and

(iii)(I) the number of supplements served to such children by (II) the national average payment rate for supplements determined under clause (C) of paragraph (3) of this subsection.

(5) For meals served in family and group day care homes, each State shall receive amounts sufficient to make payments for such meals in accordance with subsection (f)(4) of this section.

(d) Any eligible public institutions shall be approved for participation in the child care food program upon its request. Any eligible private institution shall be approved for participation if it (1) has tax exempt status under the Internal Revenue Code of 1954 or, under conditions established by the Secretary, is moving toward compliance with the requirements for tax exempt status, or (2) is currently operating a Federal program requiring nonprofit status. Family and group day care homes need not have individual tax exempt certification if they are sponsored by an institution that has tax exempt status, or, under conditions established by the Secretary, such institution is moving toward compliance with the requirements for tax exempt status or is currently operating a Federal program requiring nonprofit status. An institution applying for participation under this section shall be notified of approval or disapproval in writing within thirty days after the date its completed application is filed. If an institution submits an incomplete application to the State, the State shall so notify the institution within fifteen days of receipt of the application, and shall provide technical assistance, if necessary, to the institution for the purpose of completing its application.

(e) The State shall provide, in accordance with regulations issued by the Secretary, a fair hearing and a prompt determination to any institution aggrieved by the action of the State as it affects the participation of such institution in the program authorized by the section, or its claim for reimbursement under this section.

(f)(1) Funds paid to any State under this section shall be disbursed to eligible institutions by the State in accordance with agreements approved by the Secretary. Disbursements to any institution shall be made only for the purpose of assisting in financing the cost of providing meals to children attending institutions, or in family and group day care homes. Disbursement to any institution shall not be dependent upon the collection of moneys from participating children. All valid claims from such institutions shall be paid within forty-five days of receipt by the State. The State shall notify the institution within fifteen days of receipt of the claim if the claim as submitted is not valid because it is incomplete or incorrect.

(2) The Secretary shall establish maximum per meal reimbursement rates for each of the three categories of institutions specified in paragraphs (1), (2), and (3) of subsection (c) of this section. Such maximum reimbursement rates for lunches and suppers shall be equal to the maximum reimbursement rates established by the Secretary for lunches served under the national school lunch program. The disbursement to any institution

for meals provided under this section shall not be less, for any fiscal year, than the sum of the products obtained by multiplying the total number of each type of meal (breakfast, lunch or supper, or supplement) served in such institution in that fiscal year by the applicable national average payment rates for States for each such type of meal at that category of institution, unless the resulting sum exceeds the cost to the institution of providing meals to such children.

(3) Institutions other than family and group day care home sponsoring organizations may elect to receive reimbursement in accordance with the eligibility of each enrolled child for free, reduced-price, or paid meals under section 9 of this Act. Such reimbursement shall be based on (A) the national average payment rates for lunches under section 4 of this Act; (B) the national average payment rates for free lunches and reduced-price lunches under section 11 of this Act; (C) the national average payment rates for breakfasts, free breakfasts, and reduced-price breakfasts under section 4 of the Child Nutrition Act of 1966; and (D) the national average payment rates for supplements under subsection (c) of this section. Reimbursements to such institutions shall be made under the same procedures for determining such reimbursement levels as were prescribed by regulations in effect on September 30, 1978.

(4) Institutions that participate in the program under this section as family or group day care home sponsoring organizations shall be provided, for payment to such homes, a reimbursement in an amount determined by the Secretary to be adequate to cover the cost of obtaining and preparing food and prescribed labor costs involved in providing meals under this section, without a requirement for documentation of such costs. Such institutions shall also receive reimbursement for their administrative expenses. Reimbursement for administrative expenses shall not exceed maximum allowable levels prescribed by the Secretary. Reimbursement for administrative expenses shall also include start-up funds to finance the administrative expenses for such institutions to initiate successful operation under the program. Such start-up funds shall be in addition to other reimbursement to such institutions for administrative expenses. Start-up funds shall be payable to enable institutions satisfying the criteria of subsection (d) of this section, and any other standards prescribed by the Secretary, to develop an application for participation in the program as a family or group day care sponsoring organization or to implement the program upon approval of the application. Such start-up funds shall be payable in accordance with the procedures prescribed by the Secretary. The amount of start-up funds payable to an institution shall be not less than the institution's anticipated reimbursement for administrative expenses under the program for one month nor more than the institution's anticipated reimbursement under the program for two months.

(5) By the first day of each month of operation, the State shall provide advance payments for the month to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation. In the case of a newly participating institution, the amount of the advance payment shall reflect the State's best estimate of the level of valid claims such institutions will submit. If the State has reason to believe that an institution will not be able to submit a valid claim covering the period for which such an advance has been made, the subsequent month's advance payment shall be withheld until the State receives a valid claim. Payments advanced to institutions that are not

subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance payment.

(g) (1) Meals served by institutions participating in the program under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research. Such meals shall be served free to needy children.

(2) No institution may be prohibited from serving a breakfast, lunch, supper, and snack to any eligible child each day, except in the case of institutions that provide care to schoolchildren outside of school hours.

(3) No physical segregation or other discrimination against any child shall be made because of his or her inability to pay, nor shall there be any overt identification of any such child by special tokens or tickets, by different meals or meal service, announced or published lists of names, or other means.

(4) Each institution shall, insofar as practicable, use in its food service, foods designated from time to time by the Secretary as being in abundance, either nationally or in the food service area, or foods donated by the Secretary.

(h) The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section. The value of such commodities (or cash in lieu of commodities) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during that school year by the rate for commodities or cash in lieu thereof established for that school year in accordance with the provisions of section 6(e) of this Act. Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.

(i) For the child care food program, the State plan required under section 11(e) of this Act shall provide, in addition to other information required by regulation or available from regular reporting—

(1) the number of institutions participating in the program, together with the average daily attendance in such institutions;

(2) the number of institutions in the State that are licensed, approved, or registered or that receive funds under title XX of the Social Security Act, and the number of such institutions that participate in the program authorized under this section;

(3) the action program the State proposes to undertake to use the Federal funds provided under this section including the State's plans to extend the program to all eligible institutions (placing priority on reaching institutions in needy areas first) to assist family and group day care homes in obtaining sponsoring organizations and to encourage eligible institutions to participate in the program;

(4) a plan for the conduct of audits; and

(5) a plan to monitor program performance and measure progress in achieving program goals.

(i) The Secretary shall make available for each fiscal year to States administering the child care food program, for the purpose of conducting audits of participating institutions, an amount up to 2 percent of the funds used by each State in the program under this section, during the second preceding fiscal year.

(k) The Secretary is authorized to issue regulations directing States to develop and provide for the use of a standard form of agreement between each family and group day care sponsoring organization and the family and group day care homes participating in the program under such organization, for the purpose of specifying the rights and responsibilities of each party.

(l) (1) The Secretary shall study the administrative costs of institutions participating in the program under this section, including the cost effect of such factors as the types of institutions, the number of children served, and the location of institutions in urban or rural areas. The Secretary may prescribe maximum allowable levels for administrative payments that reflect the costs of institutions participating in the program.

(2) The Secretary shall conduct a study of the food service operations carried out in the program under this section. Such study shall include, but not be limited to (1) an evaluation of meal quality as related to costs; and (2) a determination of whether maximum reimbursement levels should be set for food service costs, including whether different reimbursement levels should be established for self-prepared meals and vendored meals, economies of scale, and differences between food service operations in institutions and family and group day care homes.

(3) The Secretary shall conduct a study on licensing problems faced by institutions and family and group day care homes. Such study shall include, but not be limited to, an evaluation of the licensing requirements under this section.

(4) Of the funds appropriated for the fiscal year ending September 30, 1979, to carry out the purposes of this section, not to exceed \$2,000,000 shall be available to the Secretary for the purpose of conducting the studies required under paragraphs (1), (2), and (3) of this subsection. The Secretary shall report the results of such studies to Congress, along with any recommendations the Secretary wishes to make, not later than eighteen months after enactment of the Child Nutrition Amendments of 1978.

(m) In any State where the State is not permitted by law or is otherwise unable to disburse the funds payable to it under this section to any institution in the State, the Secretary shall withhold all funds to which such State would be entitled and shall use such funds for the same purposes and subject to the same conditions as are required of a State.

(n)(1) Of the sums appropriated for each fiscal year to carry out the purposes of this section, \$6,000,000 shall be available to the Secretary for the purposes of providing equipment assistance to enable institutions to establish, maintain, and expand the child care food program. The Secretary shall allocate such amount among the States during each fiscal year. Such allocations shall be based on the ratio of the number of children below the age of six in each State who are members of families that meet the income standards for free and reduced-price school meals under section 9 of this Act to the number of such children in all States. In making such allocation, the Secretary shall use the most recent data available.

(2) If any State cannot use all of the funds allocated to it under this subsection the Secretary shall make reallocations to the remaining States

in the manner set forth in this subsection for allocating funds. Payments to any State of funds allocated under this subsection for any fiscal year shall be made upon condition that at least one-fourth of the cost of equipment financed under this subsection shall be financed from sources within the State, except that this condition shall not apply to equipment obtained for institutions that are especially needy, as determined by the State.

(3) Each State shall establish criteria for determining institutions that are especially needy for purposes of this subsection and shall inform all institutions within the State of those criteria. Such criteria shall be submitted to the Secretary for approval and be included in the State plan of operation for the child care food program required by subsection (i) of this section.

(4) Within thirty days of notification by the Secretary to the State of the amount of funds available under this subsection, the State shall notify institutions of the availability of funds for food service equipment. The Secretary shall establish standards to assure prompt action by States on requests by institutions for such funds, and shall also prescribe a priority system to be followed by States in awarding funds under this subsection.

(5) The Secretary shall issue regulations authorizing the State to disburse funds under this subsection directly to a supplier of food service equipment if the funds are used to purchase equipment for an institution that (A) meets all requirements for participation under this section, except for licensing requirements, and (B) satisfies all requirements for licensing, except for a requirement for food service equipment. The State shall retain legal title to such equipment until the State and the institution sign an agreement authorizing the institution to participate in the program under this section.

(6) States participating in the program under this section shall provide sufficient training, technical assistance, and monitoring to facilitate expansion and effective operation of the program, and shall take affirmative action to expand the availability of benefits under this section. Such action, at a minimum, shall include annual notification to each non-participating institution or family or group day care home within the State that is licensed, approved or registered, or that receives funds under title XX of the Social Security Act, of the availability of the program, the requirements for program participation, the availability of food service equipment funds under the program, and the application procedures to be followed in the program. The list of institutions so notified each year shall be available to the public upon request. The Secretary shall assist the States in developing plans to fulfill the requirements of this subsection.

(p) Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(q) States and institutions participating in the program under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section. Such accounts and records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and appropriate State representatives and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(r) There is hereby authorized to be appropriated for each fiscal year such funds as are necessary to carry out the purposes of this section.

STUDY OF CHOICE OF MENU

Sec. 22. As a means of diminishing waste of foods without endangering nutritional integrity of meals served, the Secretary shall conduct a study to determine the cost and feasibility of requiring schools to offer a choice of menu items within the required meal patterns. This study shall, as a minimum, include different needs and capabilities of elementary and secondary schools for such a requirement. The Secretary shall develop regulations designed to diminish such waste based on the results of this study.

CHILD NUTRITION ACT OF 1966

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SEC. 3. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as he may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (1) nonprofit schools of high school grade and under, and (2) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children. For the purposes of this section "United States" means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the District of Columbia. The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as he administered the special milk program provided for by Public Law 89-642, as amended, during the fiscal year ending June 30, 1969. Any school or nonprofit child care institution shall receive the special milk program upon their request. Children who qualify for free lunches under guidelines [set forth by the Secretary shall also be eligible for free milk, when milk is made available at times other than the periods of meal service in outlets that operate a food service program under section 4 and 17 of the National School Lunch Act and section 4 of this Act.] established by the Secretary shall also be eligible for free milk upon their request. For the fiscal year ending June 30, 1975, and for subsequent fiscal years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the [series of food away from home of the Consumer Price Index] Wholesale Price for Milk published by the Bureau of Labor Statistics of the Department of Labor. Such adjustment shall be computed to the nearest one-fourth cent. Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

SCHOOL BREAKFAST PROGRAM AUTHORIZATION

SEC. 4. (x) * * *

(d) [In circumstances of severe need where the rate per meal established by the Secretary is deemed by him insufficient to carry on an effective breakfast program in a school, the Secretary may authorize financial assistance up to 100 per centum of the operating costs of such a program, including costs of obtaining, preparing, and serving food.] Each State educational agency shall establish eligibility standards for providing additional assistance to schools in severe need, which shall include those schools in which the service of breakfasts is required pursuant to State law or under section 4(h) of the Child Nutrition Act of 1966, and in which the rate per meal established by the Secretary is insufficient to cover the costs of the breakfast program. In the selection of schools to receive assistance under this section, the State educational agency shall require applicant schools to provide justification of the need for such assistance.

(h) By the beginning of the school year ending June 30, 1980, any public school as defined in section 12(d)(6)(A) of the National School Lunch Act having an enrollment of over one hundred and twenty-five students that participated in the school lunch program during the school year ending June 30, 1978, or during any subsequent school year—

(1) shall offer breakfasts to children if, during the most recent second preceding school year for which lunches were served under the National School Lunch Act, over 50 percent of the lunches served to students at the school were served free or at a reduced price;

(2) by the beginning of the school year ending June 30, 1981, shall offer breakfasts to children if, during the most recent second preceding year for which lunches were served, 45 percent of the lunches served to students at the school were served free or at a reduced price; and

(3) by the beginning of the school year ending June 30, 1982, shall offer breakfasts to children if, during the most recent second preceding year for which lunches were served, 40 percent of the lunches served to students at the school were served free or at a reduced price.

If any such school does not serve breakfasts, the school food authority shall be deemed to have complied with this section if it extends the service of breakfasts to another school or schools that did not serve breakfasts under the school breakfast program during any school year through the school year ending June 30, 1979, that, singly or together, enroll at least as many students approved for free and reduced-price meals as the school that otherwise would be required to serve breakfasts under this subsection.

FOOD SERVICE EQUIPMENT ASSISTANCE

SEC. 5. (a) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1971, not to exceed \$38,000,000, for the fiscal year ending June 30, 1972, not to exceed \$33,000,000, for each of the three fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, not to exceed \$40,000,000 and for each succeeding fiscal year, not to exceed [\$40,000,000] \$75,000,000, to enable the Secretary to formulate and carry out a program to assist the States through grants-in-aid and other means to supply schools drawing attendance from

areas in which poor economic conditions exist with equipment, other than land or buildings, for the storage, preparation, transportation, and serving of food to enable such schools to establish, maintain, and expand school food service programs. In the case of a nonprofit private school, such equipment shall be for use of such school principally in connection with child feeding programs authorized in this Act and in the National School Lunch Act, as amended.

(b) Except for the funds reserved under subsection (e) of this section, the Secretary shall apportion the funds appropriated for the purposes of this section among the States on the basis of the ratio that the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to section 9 of the National School Lunch Act) served in each State in the latest preceding school year for which the Secretary determines data are available at the time such funds are apportioned bears to the total number of such lunches served in all States in such preceding school year. If any State cannot utilize all of the funds apportioned to it under the provisions of this subsection, the Secretary shall make further apportionments to the remaining States in the manner set forth in this subsection for apportioning funds among all the States. Payments to any State of funds apportioned under the provisions of this subsection for any fiscal year shall be made upon condition that at least one-fourth of the cost of equipment financed under this subsection shall be borne by funds from sources within the State, except that such condition shall not apply with respect to funds used under this section to assist schools that are especially needy, as determined by criteria to be established by each State and approved by the Secretary. States shall apportion their share of funds under this subsection by giving priority to schools without a food service program, *schools that do not serve both breakfasts and lunches but that will use food service equipment to initiate the service of breakfasts or lunches*, and schools without the facilities to prepare and cook hot meals at the schools (including schools having equipment that is so antiquated or impaired as to endanger the continuation of an adequate food service program or the ability to prepare and cook hot meals) or at a kitchen that serves the schools and that is operated by the local school district or by a nonprofit private school or the authority that is responsible for the administration of one or more nonprofit private schools. After making funds available to such schools, the [State shall make the remaining funds available to schools with a food service program and with the facilities to prepare and cook hot meals at the schools or at a kitchen that serves the schools and that is operated by the local school district or by a nonprofit private school or the authority that is responsible for the administration of one or more nonprofit private schools, for the purpose of purchasing needed replacement equipment] *After making funds available to such schools, the Secretary shall make the remaining funds available to eligible schools that do not meet the priority criteria, for the purpose of purchasing needed replacement equipment.*

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(e) For the fiscal years ending September 30, 1978, September 30, 1979, and September 30, 1980, [33 $\frac{1}{3}$] 50 percent of the funds appro-

priated for the purposes of this section shall be reserved to the Secretary to assist schools without a food service program and schools **[without the facilities to prepare and cook hot meals or receive hot meals]** *that do not serve breakfasts or lunches but that plan to use food service equipment to initiate a breakfast or lunch program.* The Secretary shall apportion the funds so reserved among the States on the basis of the ratio of the number of children in each State enrolled in schools without a food service program and in schools **[without the facilities to prepare and cook hot meals or receive hot meals]** *moving toward the initiation of the service of breakfasts* to the number of children in all States enrolled in schools without a food service program and in schools **[without the facilities to prepare and cook hot meals or receive hot meals]** *moving toward the initiation of the service of breakfasts.* In those States in which the Secretary administers the food service equipment assistance program in nonprofit private schools, the Secretary shall withhold from the funds apportioned to any such State under this subsection an amount which bears the same ratio to such funds as the number of children enrolled in nonprofit private schools without a food service program or **[without the facilities to prepare and cook hot meals or receive hot meals]** *moving toward the initiation of the service of breakfasts* in such State bears to the total number of children enrolled in all schools without a food service program or **[without the facilities to prepare and cook hot meals or receive hot meals]** *moving toward the initiation of the service of breakfasts* in such State. The funds so reserved, apportioned, and withheld shall be used by the State, or the Secretary in the case of nonprofit private schools, only to assist schools without a food service program and schools **[without the facilities to prepare and cook hot meals or receive hot meals]** *moving toward the initiation of the service of breakfasts.* If any State cannot use all the funds apportioned to it under the provisions of this subsection, the Secretary shall make further apportionment to the remaining States for use only in assisting schools without a food service program and schools **[without the facilities to prepare and cook hot meals or receive hot meals]** *moving toward the initiation of the service of breakfasts.* If after such further apportionment, any funds received under this subsection remain unused, the Secretary shall immediately apportion such funds among the States in accordance with the provisions of subsection (b) of this section. Payment to any State of funds under the provisions of this subsection shall be made upon the condition that at least one-fourth of the cost of the equipment financed shall be borne by funds from sources within the State, except that such condition shall not apply with respect to funds used under this subsection to assist schools that are especially needy, as determined by criteria established by each State and approved by the Secretary.

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[SEC. 7. (a)(1) The Secretary shall pay to each State for its administrative costs incurred pursuant to the administration of this Act and the National School Lunch Act for the fiscal year ending September 30, 1978, an amount equal to 1 percent, and for each of the fiscal years ending September 30, 1979, and September 30, 1980, an amount

not less than 1 percent and not greater than $1\frac{1}{2}$ percent of the funds used by each State under sections 4, 11, and 17 of the National School Lunch Act and under sections 3, 4, and 5 of this Act during the second fiscal year preceding the fiscal year for which the amounts are to be paid: *Provided*, That in no case shall the payment to any State under this section be less than \$75,000 per year nor shall any State receive less than the amount allocated to it for fiscal year 1977. The percentages specified in the foregoing sentence shall apply only to the first \$100,000,000 in funds used under the prescribed sections of law. For those funds used that exceed \$100,000,000, the Secretary shall pay an amount equal to 1 percent of such funds.

【(2) The Secretary shall make available to States administering the child care food program, for the purpose of conducting audits of participating child care institutions, an amount up to 2 percent of the funds used by each State under section 17 of the National School Lunch Act during the second fiscal year preceding the fiscal year for which the amount is to be paid.】

SEC. 7.(a)(1) There is hereby authorized to be appropriated for each fiscal year an amount equal to not less than $1\frac{1}{2}$ percent of the Federal funds expended by each State under sections 4, 11, and 17 of the National School Lunch Act and 3, 4, and 5 of this Act during the second preceding fiscal year.

(2) From such amount, the Secretary shall allocate to each State for administrative costs incurred in any fiscal year in connection with programs authorized under the National School Lunch Act or under this Act, except for the programs authorized under section 13 or 17 of the National School Lunch Act or under section 17 of this Act, an amount equal to not less than 1 percent and not more than $1\frac{1}{2}$ percent of the funds expended by each State under sections 4 and 11 of the National School Lunch Act and sections 3, 4, and 5 of this Act during the second preceding fiscal year. In no case shall the grant available to any State under this subsection be less than the amount such State was allocated in the fiscal year ending September 30, 1978, or \$100,000, whichever is the greater.

(3) From such amount, the Secretary shall allocate to each State for its administrative costs incurred under the program authorized by section 17 of the National School Lunch Act in any fiscal year an amount, based upon funds expended under such program in the second preceding fiscal year, equal to (A) 20 percent of the first \$50,000, (B) 10 percent of the next \$100,000, (C) 5 percent of the next \$250,000, and (D) $2\frac{1}{2}$ percent of any remaining funds. The Secretary may adjust any State's allocation to reflect in the size of its program.

(4) The remaining funds appropriated under this section shall be allocated among the States by the Secretary in amounts the Secretary determines necessary for the improvement in the States of the administration of the programs authorized under the National School Lunch Act and this Act, except for section 17 of this Act, including, but not limited to, improved program integrity and the quality of meals served to children.

(5) Funds available to States under this subsection and under section 13(k)(1) of the National School Lunch Act shall be used for the costs of administration of the programs for which the allocations are made, except that States may transfer up to 10 percent of any of the amounts allocated among such programs.

(6) Where the Secretary is responsible for the administration of programs under this Act or the National School Lunch Act, the amount of funds that would be allocated to the State agency under this section and under section 13(k)(1) of the National School Lunch Act shall be retained by the Secretary for the Secretary's use in the administration of such programs.

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MISCELLANEOUS PROVISIONS AND DEFINITIONS

SEC. 15. For the purposes of this Act—

(a) * * *

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(e) "School year" means the annual period [determined in accordance with regulations issued by the Secretary] from July 1 through June 30.

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[SPECIAL SUPPLEMENTAL FOOD PROGRAM

[SEC. 17. (a) The Congress finds that substantial numbers of pregnant women, infants, and young children are at special risk in respect to their physical and mental health by reason of poor or inadequate nutrition or health care, or both. It is, therefore, the purpose of the program authorized by this section to provide supplemental nutritious food as an adjunct to good health care during such critical times of growth and development in order to prevent the occurrence of health problems.

[(b)(1) During the fiscal year ending June 30, 1976, the period July 1, 1976, through September 30, 1976, the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978, the Secretary shall make cash grants to the health department or comparable agency of each State, Indian tribe, band or group recognized by the Department of the Interior; or the Indian Health Service of the Department of Health, Education, and Welfare for the purpose of providing funds to local health or welfare agencies or private non-profit agencies of such State; Indian tribe, band, or group recognized by the Department of the Interior; or the Indian Health Service of the Department of Health, Education, and Welfare, serving local health or welfare needs to enable such agencies to carry out health and nutrition programs under which supplemental foods will be made available to pregnant or lactating women and to infants determined by competent professionals to be nutritional risks because of inadequate nutrition and inadequate income, in order to improve their health status. The program authorized by this section shall be carried out supplementary to the food stamp and food distribution program and operate side by side with existing supplemental food programs.

[(2) Any eligible local health or welfare agency or private non-profit agency that applies to operate such a supplemental food program immediately shall be provided with the necessary funds to carry out the program. The requirements set forth herein shall not be construed to permit the Secretary to reduce ratably the amount of foods that an eligible health or welfare agency shall distribute under the program to pregnant or lactating mothers and infants.

[(c) In order to carry out such program during each fiscal year during the period ending September 30, 1977, there is authorized to be appropriated the sum of \$250,000,000, but in the event that such sum has not been appropriated for such purpose by the beginning of each fiscal year, the Secretary shall use \$250,000,000, or, if any amount has been appropriated for such program, the difference, if any, between the amount directly appropriated for such purpose and \$250,000,000, out of funds appropriated by section 32 of the Act of August 24, 1935 (7 U.S.C. 612c). Any funds expended from such section 32 to carry out the provisions of this section shall be reimbursed out of any supplemental appropriation hereafter enacted for the purpose of carrying out the provisions of such subsection, and such reimbursements shall be deposited into the fund established pursuant to such section 32, to be available for the purpose of such section. In order to carry out the program during the fiscal year ending September 30, 1978, there is authorized to be appropriated not to exceed \$250,000,000.

[(d) Whenever any program is carried out by the Secretary under authority of this section through any State or local or nonprofit agency, he is authorized to pay administrative costs not to exceed 20 per centum of the program funds provided to each State under the authority of this section. Each health department or comparable agency of each State, Indian tribe, band, or group recognized by the Department of the Interior; or the Indian Health Service of the Department of Health, Education, and Welfare receiving funds from the Secretary under this section shall, each year by not later than a date specified by the Secretary, for approval by the Secretary as a prerequisite to receipt of funds under this section, submit a description of the manner in which administrative funds shall be spent, including, but not limited to, a description of the manner in which nutrition education services will be provided. The Secretary shall take affirmative action to insure that programs begin in areas most in need of special supplemental food. During the first 3 months of any program, or until the program reaches its projected caseload level, whichever comes first, the Secretary shall pay those administrative costs necessary to commence the program successfully.

[(e) The eligibility of persons to participate in the program provided for under this section shall be determined by competent professional authority. Participants shall be residents of areas or members of populations served by clinics or other health facilities determined to have significant numbers of infants and pregnant and lactating women at nutritional risk.

[(f) State or local agencies or groups carrying out any programs under this section shall maintain adequate medical records on the participants assisted to enable the Secretary to determine and evaluate the benefits of the nutritional assistance provided under this section. The Secretary shall convene an advisory committee made up of representatives from the Maternal and Child Health Divisions of the Department of Health, Education, and Welfare, the Center for Disease Control, the Association of State and Territorial Public Health Nutrition Directors, the American Academy of Pediatrics, the National Academy of Science—National Research Council, the American Dietetic Association, the American Public Health Association, the Public

Health Service, and others as the Secretary deems appropriate. The committee shall study the methods available to evaluate successfully and economically, in part or in total, the health benefits of the special supplemental food program. The committee's study shall consider the usefulness of the medical data collected and the methodology used by the Department of Agriculture and the Comptroller General of the United States prior to March 30, 1975. The study shall also include the applicability to an evaluation of the special supplemental food program of other Federal and State health, welfare, and nutrition assessment and surveillance projects currently being conducted. The purpose of the advisory committee shall be to determine and recommend in detail how, using accepted scientific methods, the health benefits of the special supplemental food program may best be evaluated and assessed. The advisory committee shall report its study to the Secretary no later than March 1, 1976. The Secretary shall submit to Congress his recommendations based on such study no later than June 1, 1976.

[(g) As used in this section—

[(1) "Pregnant and lactating women" when used in connection with the term "at nutritional risk" includes women from low-income populations who demonstrate one or more of the following characteristics: known inadequate nutritional patterns, unacceptably high incidence of anemia, high prematurity rates, or inadequate patterns of growth (underweight, obesity, or stunting). Such term (when used in connection with the term "at nutritional risk") also includes low-income individuals who have a history of high-risk pregnancy as evidence by abortion, premature birth, or severe anemia. Such lactating women shall include women who are breast feeding an infant from birth up to one year of age and also all women for a period of six months post partum.

[(2) "Infants" when used in connection with the term "at nutritional risk" means children under 5 years of age who are in low-income populations which have shown a deficient pattern of growth, by minimally acceptable standards, as reflected by an excess number of children in the lower percentiles of height and weight. Such terms, when used in connection with "at nutritional risk," may also include children under 5 years of age who (A) are in the parameter of nutritional anemia, or (B) are from low-income populations where nutritional studies have shown inadequate infant diets.

[(3) "Supplemental foods" shall mean those foods containing nutrients known to be lacking in the diets of populations at nutritional risk and, in particular, those foods and food products containing high-quality protein, iron, calcium, vitamin A, and vitamin C. Such term may also include (at the discretion of the Secretary) any commercially formulated preparation specifically designed for women or infants. The contents of the food package shall be made available in such a manner as to provide flexibility, taking into account medical and nutritional objectives and cultural eating patterns.

[(4) "Competent professional authority" includes physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials as being competent professionally to evaluate nutritional risk.

【(5) "Administrative costs" include costs for referral, operation, monitoring, nutrition education, general administration, startup, clinic, and administration of the State office.

【(h)(1) There is hereby established a council to be known as the National Advisory Council on Maternal, Infant, and Fetal Nutrition (hereinafter in this section referred to as the "Council") which shall be composed of 15 members appointed by the Secretary. One member shall be a State director of the special supplemental food program, 1 member shall be a State fiscal director for the special supplemental food program (or the equivalent thereof), 1 member shall be a State health officer (or equivalent thereof), 1 member shall be a project director of a special supplemental food program in an urban area, 1 member shall be a project director of a special supplemental food program in a rural area, 1 member shall be a State public health nutrition director (or equivalent thereof), 2 members shall be parent recipients of the special supplemental food program, 1 member shall be a pediatrician, 1 member shall be an obstetrician, 1 member shall be a person involved at the retail sales level of food in the special supplemental food program, 2 members shall be officers or employees of the Department of Health, Education, and Welfare, specially qualified to serve on the Council because of their education, training, experience, and knowledge in matters relating to maternal, infant, and fetal nutrition, and 2 members shall be officers or employees of the Department of Agriculture, specially qualified because of their education, training, experience, and knowledge in matters relating to maternal, infant, and fetal nutrition.

【(2) The 11 members of the Council appointed from outside the Department of Agriculture and the Department of Health, Education, and Welfare shall be appointed for terms of 3 years, except that the 9 members first appointed to the Council shall be appointed as follows: Three members shall be appointed for terms of 3 years, 3 members shall be appointed for terms of 2 years, and 3 members shall be appointed for terms of 1 year. Thereafter all appointments shall be for a term of 3 years, except that a person appointed to fill an unexpired term shall serve only for the remainder of such term. Members appointed from the Department of Agriculture and the Department of Health, Education and Welfare, shall serve at the pleasure of the Secretary.

【(3) The Secretary shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Council.

【(4) The Council shall meet at the call of the Chairman but shall meet at least once a year.

【(5) Eight members shall constitute a quorum and a vacancy on the Council shall not affect its powers.

【(6) It shall be the function of the Council to make a continuing study of the operation of the special supplemental food program and any related Act under which diet supplementation is provided to women, infants, and children, with a view to determining how such programs may be improved. The Council shall submit to the President and the Congress annually a written report of the results of its study together with such recommendations for administrative and legislative changes as it deems appropriate.

【(7) The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions under this Act.

[(8) Members of the Council shall serve without compensation but shall receive reimbursement for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council: *Provided*, That parent recipient members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.]

SPECIAL SUPPLEMENTAL FOOD PROGRAM

SEC. 17. (a) Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. It is, therefore, the purpose of this program to provide, up to the authorization levels set forth in this section, supplemental nutrition and nutrition education through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems and to improve the health status of these persons.

(b) As used in this section—

(1) The term "administrative costs" means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program; centrifuges, measuring boards, spectrophotometers, and scales used for such certification; food delivery; monitoring; nutrition education; outreach; start-up costs; and general administration applicable to implementation of the program under this section, such as the cost of staff, warehouse facilities, transportation, insurance, developing and printing food instruments, and administration of State and local offices.

(2) The term "breastfeeding women" means women up to one year postpartum who are breastfeeding their infants.

(3) The term "children" means persons who have had their first birthday but have not yet attained their fifth birthday.

(4) The term "competent professional authority" means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

(5) The term "infants" means persons under one year of age.

(6) The term "local agency" means a public health or welfare agency or a private nonprofit health or welfare agency, which, directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, and, or group recognized by the Department of the Interior, the Indian Health service of the Department of Health, Education, and Welfare, or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior.

(7) The term "nutrition education" means individual or group sessions and provision of materials designed to improve health status, achieve positive change in dietary habits, and emphasize relation-

ships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

(8) The term "nutritional risk" means (A) certain nutritional conditions detectable by biochemical or anthropometric measurements (B) other documented nutritionally related medical conditions, (C) inadequate nutritional patterns, or (D) conditions which predispose persons to inadequate nutritionally related medical conditions, including, but not limited to alcoholism and drug abuse.

(9) The term "plan of operation and administration" means a document that describes the manner in which the State intends to implement and operate the program.

(10) The term "postpartum women" means women up to 6 months after termination of pregnancy.

(11) The term "pregnant women" means women determined to have one or more fetuses in utero.

(12) The term "Secretary" means the Secretary of Agriculture.

(13) The term "State agency" means the health department or comparable agency of each State; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health, Education, and Welfare.

(14) The term "supplemental foods" means those foods containing nutrients found by nutritional research to be lacking in the diets of pregnant women, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary. State agencies may, with the approval of the Secretary, substitute different foods providing the nutritional equivalent of foods prescribed by the Secretary, to allow for different cultural eating patterns.

(c)(1) The Secretary is authorized to carry out a special supplemental food program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children who meet the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to the food stamp program (91 Stat. 958) and to any program under which foods are distributed to needy families in lieu of food stamps.

(2) Subject to the authorization levels specified in subsection (g) of this section—

(A) the Secretary shall make cash grants to State agencies for the purpose of administering the program; and

(B) any eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental food. The existence of a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977 shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity

supplemental food program under section 1304 of the Food and Agriculture Act of 1977, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(d)(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, and infants and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of persons for participation in the program. Persons at nutritional risk shall be eligible for the program only if they are members of families that meet the income standards prescribed for free and reduced price school meals under section 9 of the National School Lunch Act.

(3) Persons shall be certified for participation in accordance with general procedures prescribed by the Secretary.

(e)(1) The State agency shall ensure that nutrition education is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program. The State agency may also provide nutrition education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the program under this section who do not participate in the program. The Secretary shall prescribe standards to ensure that adequate nutrition education services are provided. The State agency shall provide training for persons providing nutrition education under this section. Nutrition education shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education they have received.

(2) The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health, Education, and Welfare for comment, issue such materials for use in the program under this section.

(f)(1) Each State agency shall annually submit to the Secretary, by a date specified by the Secretary, a plan of program operation and administration for approval by the Secretary as a prerequisite to receiving funds under this section. The plan shall include, among such other information as the Secretary may require—

(A) a description of how the State will distribute administrative funds, including start-up funds, to local agencies operating under the program;

(B) a description of the State agency's financial management system;

(C) a description of methods used to determine nutritional risk;

(D) a budget for administrator funds;

(E) the staffing pattern;

(F) nutrition education goals and action plans, including a description of the methods which shall be used to meet the special nutrition education needs of migrants and Indians;

(G) Plans to provide program benefits under this section to eligible migrants and Indians;

(H) a list of all areas and special populations, in priority order based on relative need, within the jurisdiction of the State agency and

the State agency's plans to initiate or expand operations under the program in areas most in need of supplemental foods, including plans to inform nonparticipating local agencies about the availability and benefits of the program and the availability of technical assistance in implementing the program, and a description of how the State agency will take all reasonable actions to identify potential local agencies and encourage such agencies to implement or expand operation under the program within the following year in the top third of all areas underserved or partially served;

(I) a description of how the State agency's delivery system will enable low-income persons to receive supplemental foods under this program, in accordance with standards developed by the Secretary;

(J) the State agency's plans for informing eligible persons of the program under this section in accordance with paragraph (8) of this subsection;

(K) a description of how the State plans to coordinate operations under the program with special counseling services such as, but not limited to, family planning, immunization, prenatal care, well-child care, alcohol and drug abuse counseling, and child abuse counseling, and with the food stamp program; and

(L) a copy of the procedure manual developed by the State agency for the program.

The Secretary shall not approve any plan that permits any person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977.

(2) Not less than one month prior to the submission to the Governor of the plan of operation and administration required by this subsection, the State agency shall conduct public hearings to enable the general public to participate in the development of the State plan.

(3) The Secretary shall establish procedures under which eligible migrants may, to the maximum extent feasible, continue to participate in the program under this section when they are present in States other than the State in which they were originally certified for participation in the program. Each State agency shall be responsible for administering the program for migrant populations within its jurisdiction.

(4) State agencies shall submit monthly financial reports and participation data to the Secretary.

(5) States and local agencies operating under the program shall keep such accounts and records, including medical records, as may be necessary to enable the Secretary to determine whether there has been compliance with this section and to determine and evaluate the benefits of the nutritional assistance provided under this section. Such accounts and records shall at times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(6) The State agency, upon receipt of a completed application from a local agency for participation in the program (and the Secretary, upon receipt of a completed application from a State agency), shall notify the applicant agency in writing within thirty days of the approval or disapproval of the application, and any disapproval shall be accompanied with a statement of the reasons for such disapproval. Within fifteen days after

receipt of an incomplete application, the State agency (or the Secretary) shall notify the applicant agency of the additional information needed to complete the application.

(7) Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the program within twenty days of the date that the household contacts a local agency in person during office hours to make what may reasonably be interpreted as an oral or written request to participate in the program. The Secretary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions, must receive benefits more expeditiously.

(8) The State agency shall, in cooperation with participating local agencies, publicize the availability of program benefits, including the eligibility criteria for participation and the locations of local agencies operating the program. Such information shall be publicly announced by the State agency and by local agencies at least annually. Such information shall also be distributed to offices and organizations that have contact with significant numbers of potentially eligible persons, including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low-income areas.

(9) The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation.

(10) If a person certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that person's certification of eligibility shall remain valid for the period for which the person was originally certified.

(11) The Secretary shall establish standards for the proper, efficient, and effective administration of the program, including standards that will ensure sufficient State agency staff. If the Secretary determines that a State agency has failed without good cause to administer the program in a manner consistent with this section or to carry out the approved plan of operation and administration under this subsection, the Secretary may withhold such amounts of the State agency's administrative funds as the Secretary deems appropriate. Upon correction of such failure during a fiscal year by a State agency, any funds so withheld for such fiscal year shall be provided to the State agency.

(12) The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section. To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is moderate. Products specifically designed for pregnant, postpartum, and breastfeeding women, or infants shall be available at the discretion of the Secretary if the products are commercially available or are justified to and approved by the Secretary based on clinical tests performed in accordance with standards prescribed by the Secretary.

(13) A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns.

(14) The State agency shall provide nutrition education materials and instruction in the appropriate foreign language, and use appropriate foreign language materials in the administration of the program, in areas in which a substantial number of low-income households speak a language other than English.

(g) There is hereby authorized to be appropriated \$650,000,000 for the fiscal year ending September 30, 1979, \$850,000,000 for the fiscal year ending September 30, 1980, \$900,000,000 for the fiscal year ending September 30, 1981, and \$950,000,000 for the fiscal year ending September 30, 1982, for the purpose of carrying out the program authorized by this section. Of the sums appropriated for any fiscal year for the program under this section, one-half of one percent, not to exceed \$3,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, and administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations.

(h)(1) The Secretary shall make 20 percent of the funds provided under this section for each fiscal year (other than funds expended for evaluation and pilot projects pursuant to subsection (g) of this section) available for State agency and local agency administrative costs. When reallocating funds, the Secretary may exceed the 20 percent limitation for administrative costs if the Secretary determines such action necessary for the proper, efficient, and effective administration of the program.

(2) The Secretary, for each of the fiscal years 1979 through 1982, shall allocate administrative funds to each State agency on the basis of a formula determined by the Secretary, which shall include a minimum amount and be designed to take into account the varying needs of State agencies, based on factors such as the number of local agencies and the number of persons participating in the program at those agencies.

(3) Each State shall provide, from its allocation for administrative funds, funds to local agencies for their administrative costs. Each State agency shall distribute administrative funds to local agencies in accordance with allocation standards, developed by the State agency in cooperation with such local agencies, which satisfy allocation guidelines established by the Secretary. Such allocation standards shall take into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as local agency staffing needs, density of population, number of persons served, and availability of administrative support from other sources. These allocation standards shall be included in the plan of operation and administration required by subsection (f) of this section.

(4) The State agency shall forward in advance to local agencies those administrative funds necessary to successfully commence operation of the program under this section until the three months following approval or until a program reaches its projected caseload level, whichever comes first.

(i) By the beginning of any fiscal year for which an appropriation is authorized under this section, the Secretary shall divide the authorized amount among the States, on the basis of a formula determined by the Secretary. Each State's allocation, as so determined, shall constitute the State's authorized operational level for that fiscal year, except that the Secretary shall reallocate funds periodically if the Secretary determines that a State is unable to spend its allocation. For the purposes of the formula,

if Indians are served by the health department of a State, the formula shall be based on the State population inclusive of the Indians within the State boundaries. If Indians residing in the State are served by a State agency other than the health department of the State, the population of the tribes within the jurisdiction of the State being so served shall not be included in the formula for such State, and shall instead be included in the formula for the State agency serving the Indians. Notwithstanding any provision of this section the Secretary may use a portion of a State's allocation to purchase supplemental foods for donation to the State under this section.

(j) By October 1 of each year, the Secretary shall prepare a report describing plans to insure that, to the maximum extent feasible, eligible members of migrant populations continue to participate in the program as such persons move among States. The report shall be made available to the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

(k)(1) There is hereby established a National Advisory Council on Maternal, Infant, and Fetal Nutrition (referred to in this section as the "Council") composed of twenty members appointed by the Secretary. One member shall be a State director of a program under this section; one member shall be a State official responsible for commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977; one member shall be a State fiscal officer of a program under this section (or the equivalent thereof); one member shall be a State health officer (or the equivalent thereof); one member shall be a local agency director of a program under this section in an urban area; one member shall be a local agency director of a program under this section in a rural area; one member shall be a project director of a commodity supplemental food program; one member shall be a State public health nutrition director (or the equivalent thereof); one member shall be a representative of an organization serving migrants; one member shall be an official from a State agency serving predominantly Indians; three members shall be parent participants of a program under this section or of a commodity supplemental food program; one member shall be a pediatrician; one member shall be an obstetrician; one member shall be a representative of a nonprofit, public interest organization that has experience with and knowledge of the special supplemental food program; two members shall be officials of the Department of Health, Education, and Welfare appointed by the Secretary of Health, Education, and Welfare; and two members shall be officials of the Department of Agriculture appointed by the Secretary.

(2) Members of the Council appointed from outside the Department of Agriculture and the Department of Health, Education, and Welfare shall be appointed for terms not exceeding three years. State and local officials shall serve only during their official tenure, and the tenure of parent participants shall not exceed two years. Persons appointed to complete an unexpired term shall serve only for the remainder of such term.

(3) The Secretary shall designate a Chairman and a Vice Chairman. The Council shall meet at the call of the Chairman, but shall meet at least once a year. Eleven members shall constitute a quorum.

(4) The Council shall make a continuing study of the operation of the program under this section and related programs to determine how the program may be improved. The Council shall submit once every two years to the President and Congress, beginning in the fiscal year ending Septem-

ber 30, 1980, a written report, together with its recommendations on such program operations.

(5) The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.

(6) Members of the Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council. Parent participant members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.

(l) Foods available under section 416 of the Agriculture Act of 1949, or purchased under section 32 of the Act of August 24, 1935, may be donated by the Secretary for distribution to programs carried out under this section. The Secretary is also authorized to purchase and distribute supplemental foods for donation to programs carried out under this section, with appropriated funds, including funds appropriated under this section.

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NUTRITION EDUCATION AND TRAINING

SEC. 19.(a) * * *

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APPROPRIATIONS AUTHORIZED

(j)(1) For the fiscal years beginning October 1, 1977, and October 1, 1978, grants to the States for the conduct of nutrition education and information programs shall be based on a rate of 50 cents for each child enrolled in schools or in institutions within the State, except that no State shall receive an amount less than \$75,000 per year.

(2) For the fiscal year beginning October 1, 1979, there is hereby authorized to be appropriated for grants to each State for the conduct of nutrition education and information programs, an amount equal to the higher of (A) 50 cents for each child enrolled in schools or in institutions within each State, or (B) \$75,000 for each State. Grants to each State from such appropriations shall be based on a rate of 50 cents for each child enrolled in schools or in institutions within such State, except that no State shall receive an amount less than \$75,000 for that year. If funds appropriated for such year are insufficient to pay the amount to which each State is entitled under the preceding sentence, the amount of such grant shall be ratably reduced to the extent necessary so that the total of such amounts paid does not exceed the amount of appropriated funds. If additional funds become available for making such payments, such amounts shall be increased on the same basis as they were reduced.

(3) Enrollment data used for purposes of this subsection shall be the latest available as certified by the Office of Education of the Department of Health, Education, and Welfare.

(4) The Secretary is authorized to withhold up to 10 percent of the funds appropriated under this subsection for any fiscal year to carry out innovative research, evaluation, development, and demonstration projects relevant to the purposes of this section, except that such withholding shall not cause any State to receive less than \$75,000 from such funds. The Secretary shall expend any funds so withheld in the following manner: (A) one-half of the funds withheld shall be reserved for grants to State educational agencies, and (B) the remainder of the funds withheld shall be reserved for grants to, or contractual or other arrangements with, institutions of higher education, public and non-profit private educational or research institutions, or other nonprofit organizations.

MINORITY VIEWS ON PROVISION MANDATING SCHOOL BREAKFAST PROGRAMS—H.R. 12511

We, the undersigned, are strongly opposed to the provision in this bill which mandates schools in low-income areas to provide a school breakfast program, and are appalled at the lack of consideration in our committee of this entire bill which makes important changes in the federally financed child nutrition programs. We support a breakfast program voluntarily adopted by the schools, and support the incentives in this bill for an expansion of school breakfasts, but oppose making them compulsory.

In our judgment the requirement that virtually every public school serving a high proportion of school lunches to low-income students must provide a breakfast program is unwise, unwarranted, and unnecessary. It represents a dangerous step in the direction of Federal dictation of State and local educational policy and school programming. Moreover, this ill-conceived action received scant consideration in the one day of hearings the Subcommittee on Elementary, Secondary, and Vocational Education conducted on bills other than the one here reported, and no consideration at all in the form in which it is reported to the House.

As one example of hasty action on the provision, the committee agreed to exempt private schools from the mandate because of the strong objections of the U.S. Catholic Conference to such a requirement, thus for the first time treating public and private schools differently in this legislation. We do not object to the exemption of private schools, but feel that their objection to the requirement is equally valid for public schools.

As for the procedure we followed in approving this and other major changes in these important programs, it was such that our colleague, Mr. Blouin, moved that we report a simple extension of the two expiring programs, plus a necessary increase in the WIC authorization, and refer this entire package back to the subcommittee for appropriate study and possible subsequent introduction as a Committee amendment on the Floor. This was defeated 22-15, although discounting proxies on both sides the vote was 10-10. Mr. Blouin's motion was well-founded.

When Members assembled shortly after 10:00 a.m. to consider the more simple bill extending expiring programs, they were for the first time presented with a forty-six page substitute offered by Chairman Perkins, which with a few amendments is the bill we reported. The

Chairman himself confessed that he had seen parts of it only that morning. Obviously, there was no time in Committee to even read the bill, let alone understand its provisions.

The mandated breakfast program has been discussed since the Department of Agriculture proposed it (but in a different form) in testimony before the Subcommittee on Elementary, Secondary, and Vocational Education on April 27. The reaction of school administrators has been almost uniformly negative, and for what we consider are very good reasons. First there is the philosophical aversion to having the Federal Government dictate policy to State and local school officials. The school lunch program itself is not mandated, and probably could not be. Thus, when USDA proposed this mandate, it did so with sanctions against schools which did not comply, such as withholding administrative or lunch funds. Otherwise, it would have no authority to force schools to take this action.

The committee—in an astonishing flight from responsibility for its own action—eliminated those sanctions from the proposal, thus leaving the whole matter of enforcement to the individual action of parents, or other parties with standing, in the nearest U.S. District Court. This should add to President Carter's publicly expressed concern that the American people are being over-lawyered. It can only add to the concern of school districts, in that they cannot now predict what form court-ordered enforcement of this mandate might take. The majority on the committee—in an odd posture for law-makers—may have viewed this elimination of financial sanctions as an invitation to ignore the law. We may be sure that Federal judges, with their penchant for enforcing the law, will not share this attitude. They may resent the added burden on over-crowded court calendars and their time, but they will surely enforce the law.

Consider the uncertainties of such enforcement. The bill says that if a school with more than 125 students participating in the school lunch program serves more than half of its daily lunches free or at reduced price, then it shall institute a breakfast program by the beginning of the school year ending in June of 1980. For the next year the 50 percent free or reduced price trigger drops to 45 percent, and thereafter to 40 percent. Suppose a school district found it utterly impracticable to institute a breakfast program in an eligible school, even under court order to do so. Could it simply drop the lunch program, and thus avoid the mandate of the law which applies only to schools with a lunch program? Would a Federal judge permit such evasion? Would some school boards, in anticipation of either having to implement an expensive and cumbersome breakfast program or face possible contempt of court in the event of a court order, simply drop the lunch program upon enactment of this legislation, thus avoiding the whole issue? Nobody knows. But that is precisely the result feared by the U.S. Catholic Conference as expressed in its letter to Chairman Perkins of April 28, 1978, opposing such a mandate. Public school boards are under no compulsion, either, to retain school lunch programs.

Whether or not any public school district takes drastic action to avoid the mandated breakfasts, the reasons why school administrators oppose the requirement are persuasive—and they are not based upon

an unwillingness to provide breakfast for children who may not have had one. They are considerations of practicability and cost.

Mr. Redwood Taylor, Director of School Food Services for the State of Kentucky, noted in testimony before our committee that exempting the smallest schools would not help because:

In many instances in consolidated districts with one high school serving the entire county, it would be more difficult for administrators to initiate a breakfast program in a larger school than it would be in a smaller school.

He went on to say that:

Such a mandated breakfast program would, in fact impact total educational program for such districts for the following reasons:

A. The entire county busing schedule would have to be arranged so that all schools with a 50% free or reduced price eligibility would have their students at school in time to participate in the Breakfast Program.

B. The length of the educational day for students countywide would thus be dictated by the busing schedule and contrived to meet the needs of a few schools in the district.

He went on to express concern about targeting only those schools with a 50 percent or greater participation of low-income students as:

forcing administrators to discriminate against the non-needy child who may have just as great a nutritional need for a breakfast as does the needy one . . . [and] makes me wonder if USDA is not, in fact, attempting to turn the Child Nutrition Programs into a welfare program.

We are deeply concerned not just with the practicalities of this proposal, but with the thoughtlessness with which it would invade the authority of elected State and local school officials and of legislatures to determine public education policy. There is perhaps no more sensitive area of Federal-State relations, raising as it does issues of authority for decision-making in a field of State responsibility which involves also the rights and responsibilities of parents. Certainly if the Congress is going to undertake to dictate school policies in ways that affect the total operation of the schools, it should only do so after the most intensive consideration for the most compelling reasons.

If there are compelling reasons for ever mandating a breakfast program, they have not been presented to our committee. The mandate, aside from its lack of consideration and obvious philosophical and practical problems, would appear to be unnecessary.

Since the establishment of the breakfast program as a school nutrition option in 1966 the Congress has taken a number of steps to encourage its expansion, particularly in areas where the need is most concentrated. In 1975 (Public Law 94-105) we declared it to be a national policy to encourage schools to make the breakfasts available where it is most needed, and directed the Secretary of Agriculture to devise plans to implement that policy. In 1977 (Public Law 95-166) we required the States to establish criteria to determine "especially needy" schools which would qualify for higher reimbursement rates (up to 100 percent of the costs of the breakfast program), and to offer them such rates. These efforts have begun to produce results.

In the past two years some 7,100 schools have come into the breakfast program, and 20,000 of the Nation's 90,000 schools offer the program and serve 3 million breakfasts daily. Yet the Administration estimated that this mandate, even with the financial sanctions it sought to impose, would bring only an additional 9,000 schools over the next two years. There is no estimate of how many schools a mandate enforced by court action would bring into the program. In any event, the mandate seems utterly unnecessary.

It is made even more unnecessary—as well as untimely—by the additional financial inducements this bill would provide to institute a breakfast program. It permits greatly simplified accounting by joining the breakfast and lunch accounts; it make equipment assistance more available to schools who need it for breakfasts; it also provides that schools mandated by State or Federal law (several States now have such a law) will be eligible for the higher reimbursement rates provided “especially needy” schools. The sensible approach for the committee would be to provide additional incentives for a breakfast program without the mandate and see what results they would produce over the next few years. As we have said, if compulsion is to be considered at all in this program, it should be the last thing considered.

For all these reasons, we are opposed to this wholly undesirable, unnecessary provision and the drastic and dangerous policy change it would represent in the National School Lunch and Child Nutrition programs.

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